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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL
ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION

Appellants,

v.

CITY OF SEATTLE,

Respondent,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMEN,

Respondents.

OPENING BRIEF OF AMERICAN HOTEL & LODGING
ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and
WASHINGTON HOSPITALITY ASSOCIATION

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	1
III. STATEMENT OF THE CASE.....	2
IV. ARGUMENT	3
A. I-124 Violates the Single Subject Rule.....	3
1. I-124's Title Is Restrictive, Requiring Stricter Scrutiny, Which I-124 Fails	6
2. I-124 Fails the Rational Unity Test Applied to Measures with General Titles: The Court Cannot Know if Voters Would Have Approved the Pieces Separately.....	11
B. AHLA has Standing to Challenge I-124.....	13
1. AHLA Has Direct Standing.	14
a. The blacklisting provision implicates issues of public importance.....	14
b. AHLA has direct standing to challenge the blacklisting provision under the Uniform Declaratory Judgment Act.	15
2. AHLA Also Has Third Party Standing.	18
a. AHLA has suffered injury-in-fact.....	19
b. Hotels have a close relationship with guests.....	21
c. Obstacles hinder hotel guests from protecting their own rights.	23

d.	AHLA is an adequate advocate.....	26
C.	Part I of I-124 Forces Hotels to Violate the Constitutional Rights of Their Guests and Is Thus Void.....	26
1.	I-124 Violates a Hotel Guest’s Right to Privacy under the Washington Constitution.	28
a.	Placement on the blacklist interferes with a person’s “private affairs” (and causes real harm).....	28
b.	The authority of law does not justify this intrusion.....	32
2.	I-124 Violates the 14th Amendment.....	33
a.	Being placed on a blacklist will damage the name and reputation of hotel guests.....	34
b.	The blacklist interferes with an interest previously recognized by the state.	34
c.	The City cannot compel hotels to engage in unconstitutional law enforcement.....	35
3.	The Harms Caused by I-124 are Not Speculative.	36
D.	WISHA Preempts Part II of I-124	38
1.	The Superior Court Analyzed Preemption Incorrectly.	40
2.	WISHA Expressly Preempts SMC 14.25.070-100.	41
3.	WISHA’s History and Context Imply Preemption.	44

4. SMC 14.25.070-100 Conflicts with WISHA..... 48
CONCLUSION..... 49

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>ACLU of Nev. v. Masto</i> , 670 F.3d 1046 (9th Cir. 2012)	32
<i>Am. Legion Post #149 v. Wash. State Dep't of Health</i> , 164 Wn.2d 570 (2008)	16
<i>Amalgamated Transit Union Local 587 v. State</i> , 142 Wn.2d 183 (2000)	<i>passim</i>
<i>Associated Builders & Contractors, Golden Gate Chapter Inc. v. Baca</i> , 769 F. Supp. 1537 (N.D. Cal. 1991)	20, 37
<i>Atay v. County of Maui</i> , 842 F.3d 688 (2016)	41
<i>Bainbridge Island Police Guild v. City of Puyallup</i> , 172 Wn.2d 398 (2011)	29
<i>Bellevue John Does 1-11 v. Bellevue School District #405</i> , 164 Wn.2d 199 (2008)	28, 29, 32
<i>Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin County</i> , 115 F.3d 1372 (8th Cir. 1997)	19
<i>Benton County v. Zink</i> , 191 Wn. App. 269 (2015)	16
<i>In re Boot</i> , 130 Wn.2d 553 (1996)	7
<i>Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Auth.</i> , 335 F. Supp. 2d 275 (D. Conn. 2004)	22

<i>Brown v. City of Yakima</i> , 116 Wn.2d 556 (1991)	39, 40
<i>Brown v. Montoya</i> , 662 F.3d 1152 (10th Cir. 2011)	34
<i>Cannabis Action Coal. v. City of Kent</i> , 180 Wn. App. 455 (2014)	48
<i>Caplin & Drysdale, Chartered v. United States</i> , 491 U.S. 617 (1989).....	18
<i>City & County of San Francisco v. U.S. Postal Serv.</i> , No. C 09-1964 RS, 2011 WL 5079582 (N.D. Cal. Oct. 25, 2011), <i>aff'd</i> , 546 F. App'x 697 (9th Cir. 2013)	19
<i>City of Burien v. Kiga</i> , 144 Wn.2d 819 (2001)	4, 10, 11, 13
<i>City of Longview v. Wallin</i> , 174 Wn. App. 763 (2013)	16
<i>City of Seattle v. State</i> , 103 Wn.2d 663 (1985)	15
<i>City of Seattle v. Williams</i> , 128 Wn.2d 341 (1995)	41
<i>City of Snoqualmie v. Constantine</i> , 187 Wn.2d 289 (2016)	15
<i>City of Spokane v. Portch</i> , 92 Wn.2d 342 (1979)	47
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998).....	19
<i>Commonwealth v. Donahue</i> , 626 Pa. 437 (2014).....	37
<i>Cory v. Nethery</i> , 19 Wn.2d 326 (1943)	6

<i>Craig v. Boren</i> , 429 U.S. 190 (1976).....	19, 21
<i>Czajkowski v. Illinois</i> , 460 F. Supp. 1265 (N.D. Ill. 1977).....	22
<i>DeCano v. State</i> , 7 Wn.2d 613 (1941).....	6
<i>Dep't of Ecology v. Theodoratus</i> , 135 Wn.2d 582 (1998).....	25
<i>E. Coast Test Prep LLC v. Allnurses.com, Inc.</i> , 167 F. Supp. 3d 1018 (D. Minn. 2016).....	25
<i>Farris v. Munro</i> , 99 Wn.2d 326 (1983).....	14
<i>Filo Foods, LLC v. City of SeaTac</i> , 183 Wn.2d 770 (2015).....	8, 9, 12
<i>Fritz v. Gorton</i> , 83 Wn.2d 275 (1974).....	4
<i>Heesan Corp. v. City of Lakewood</i> , 118 Wn. App. 341 (2003).....	42
<i>Heinsma v. City of Vancouver</i> , 144 Wn.2d 556 (2001).....	39, 40, 44
<i>Hejira Corp. v. MacFarlane</i> , 660 F.2d 1356 (10th Cir. 1981).....	21
<i>Hetherington v. Sears, Roebuck & Co.</i> , 652 F.2d 1152 (3d Cir. 1981).....	15
<i>HJS Dev., Inc. v. Pierce County</i> , 148 Wn.2d 451 (2003).....	40
<i>Hong Kong Supermarket v. Kizer</i> , 830 F.2d 1078 (9th Cir. 1987).....	26

<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977).....	13
<i>Kaahumanu v. Hawaii</i> , 682 F.3d 789 (9th Cir. 2012)	21, 23
<i>Kabbae v. Dep't of Soc. & Health Servs.</i> , 144 Wn. App. 432 (2008)	38
<i>Kelley v. Howard S. Wright Const. Co.</i> , 90 Wn.2d 323 (1978)	49
<i>Lawson v. City of Pasco</i> , 168 Wn.2d 675 (2010)	39
<i>Lee v. Oregon</i> , 869 F. Supp. 1491 (D. Or. 1994)	20
<i>Lee v. State</i> , 185 Wn.2d 608 (2016)	6, 10, 11
<i>In re Meyer</i> , 142 Wn.2d 608 (2001)	34
<i>Milkovich v. Lorain Journal Co.</i> , 497 U.S. 1 (1990).....	26
<i>Minnesota v. Olson</i> , 495 U.S. 91 (1990).....	22, 23
<i>Nat'l Elec. Contractors Ass'n, Cascade Chapter v. Riveland</i> , 138 Wn.2d 9, 35–36 (1999)	49
<i>Nguyen v. State, Dep't of Health Med. Quality Assurance Comm'n</i> , 144 Wn.2d 516 (2001)	33
<i>Olympic Motors, Inc. v. McCroskey</i> , 15 Wn.2d 665 (1942)	7
<i>Pa. Psychiatric Soc'y v. Green Spring Health Servs., Inc.</i> , 280 F.3d 278 (3d Cir. 2002).....	25

<i>Paris Adult Theatre I v. Slaton</i> , 413 U.S. 49 (1973).....	33
<i>Paul v. Davis</i> , 424 U.S. 693 (1976).....	33, 34, 35
<i>Rabon v. City of Seattle</i> , 135 Wn.2d 278 (1998).....	42
<i>Scott v. Cascade Structures</i> , 100 Wn.2d 537 (1983).....	7
<i>Sec’y of State v. Joseph H. Munson Co.</i> , 467 U.S. 947 (1984).....	19, 26
<i>Serv. Emps. Int’l Union Local 925 v. Freedom Found.</i> , 197 Wn. App. 203 (2016).....	28
<i>Singleton v. Wulff</i> , 428 U.S. 106 (1976).....	18, 23
<i>Smith v. Doe</i> , 538 U.S. 84 (2003).....	34
<i>State v. Broadaway</i> , 133 Wn.2d 118 (1997).....	6
<i>State v. Herron</i> , 183 Wn.2d 737 (2015).....	18
<i>State v. Surge</i> , 160 Wn.2d 65 (2007).....	28
<i>State v. Watson</i> , 155 Wn.2d 574 (2005).....	14
<i>Sutton v. Providence St. Joseph Med. Ctr.</i> , 192 F.3d 826 (9th Cir. 1999).....	36
<i>Swedish Hosp. v. Dep’t of Labor & Indus.</i> , 26 Wn.2d 819 (1947).....	6

<i>Thomas More Law Ctr. v. Obama</i> , 720 F. Supp. 2d 882 (E.D. Mich. 2010), <i>aff'd</i> , 651 F.3d 529 (6th Cir. 2011).....	19
<i>Tingey v. Haisch</i> , 159 Wn.2d 652 (2007)	43
<i>Totes-Isotoner Corp. v. United States</i> , 594 F.3d 1346 (Fed. Cir. 2010).....	21
<i>Ulrich v. City & County of San Francisco</i> , 308 F.3d 968 (9th Cir. 2002)	33
<i>United States v. Clegg</i> , 509 F.2d 605 (5th Cir. 1975)	36
<i>Wash. Educ. Ass'n v. State</i> , 97 Wn.2d 899 (1982)	7
<i>Wash. Fed'n of State Emps. v. State</i> , 127 Wn.2d 544 (1995)	4, 7
<i>Wash. Nat. Gas Co. v. Pub. Util. Dist. No 1 of Snohomish City</i> , 77 Wn.2d 94 (1969)	14
<i>State ex. rel Washington Toll Bridge Authority v. Yelle</i> , 32 Wn.2d 13, 27 (1948)	7, 8
<i>Wisconsin v. Constantineau</i> , 400 U.S. 433 (1971).....	26, 34, 35
<i>Woodfin Suite Hotels, LLC v. City of Emeryville</i> , No. C 06-1254 SBA, 2006 WL 2739309, at *7 (N.D. Cal. Aug. 23, 2006).....	16
Statutes	
29 U.S.C. § 667	44
29 U.S.C. § 667(a)	42
RCW 35A.12.130.....	4

RCW 42.56.001 <i>et seq.</i>	30
RCW 49.17	47
RCW 49.17.010	38, 41, 46
RCW 49.17.040	46, 47
RCW 49.17.050(7).....	46
RCW 49.17.080-090	46
RCW 49.17.100	46
RCW 49.17.120	46
RCW 49.17.130	46
RCW 49.17.160	46
RCW 49.17.170	48
RCW 49.17.180	46
RCW 49.17.180(8).....	48
RCW 49.17.190	48
RCW 49.17.190(6).....	46
RCW 49.17.210	46
RCW 49.17.230	42, 46
RCW 49.17.250	46
RCW 49.17.270	39, 41, 43
RCW 49.46.820	42
RCW 49.60.215	35
RCW 51.04.020	46

RCW Chapter 70.98.....	43
Municipal Ordinances	
SMC 14.25	48
SMC 14.25.020	2, 14
SMC 14.25.030(C).....	30
SMC 14.25.040	17
SMC 14.25.070	2, 14, 38
SMC 14.25.070-100.....	38, 39, 41, 47
SMC 14.25.080	38
SMC 14.25.080-90.....	48
SMC 14.25.090	38
SMC 14.25.100	38
SMC 14.25.110	2, 14
SMC 14.25.130	2, 3, 14
SMC 14.25.150(A).....	38
SMC 14.25.150(C).....	38
SMC 14.25.150(D).....	30
SMC 14.25.160	3
SMC 7.45.080	4
Constitutional Provisions	
Seattle City Charter Article IV, § 7	4
U.S. Const., Amendment XIV	21, 33, 35, 36

Wash. Const. Article I, § 7.....	28
Wash. Const. Article II, § 19	4
Wash. Const. Article II, § 35	45
Wash. Const. art. II, sec. 37	40
Regulations	
WAC 296-800-11010.....	48
WAC 296-800-11040.....	48
WAC 296-900-12015 <i>et seq.</i>	48
Other Authorities	
Alan S. Paja, <i>The Washington Industrial Safety and Health Act: Wisha's Twentieth Anniversary, 1973-1993</i> , 17 U. Puget Sound L. Rev. 259, 261 (1994).....	45
Gore Was Accused of Sexual Advances, N.Y. Times (June 23, 2010), www.nytimes.com/2010/06/24/us/politics/24gore.html?mcubz=3	31
Jane Rae Hotneier, <i>An Alternative to Federal Preemption: The Washington Plan</i> , 9 Gonz. L. Rev. 615, 615 (1974).....	45
Mark O. Brown, <i>A Discussion of the Washington Industrial Safety and Health Act of 1973</i> , 17 U. Puget Sound L. Rev. 245, 248 (1994)	45, 47
Michael D. Gilbert, <i>Single Subject Rules and the Legislative Process</i> , 67 Pitt. L. Rev. 803, 807 (2006)	5
Naimah Jabali-Nash, <i>Al Gore Cleared; Former VP Baffled by Sex Assault Allegations</i> , CBS News (August 3, 2010), https://www.cbsnews.com/news/al-gore-cleared-former-vp-baffled-by-sex-assault-allegations/	32

Patrick Witt, *A Sexual Harassment Policy That Nearly Ruined My Life*, Boston Globe (Nov. 3, 2014) (last visited Feb. 6, 2017).....31

I. INTRODUCTION

Seattle Initiative 124 (“I-124”) demonstrates the dangers of legislating by initiative and the importance of judicial review. The unprecedented measure has several disturbing and fatal flaws. First, the drafters of I-124 included distinct and unconnected provisions (blacklisting, health insurance, workplace safety, and industry stabilization), in violation of the requirement that initiatives contain only a single subject.

Second, I-124’s draconian blacklisting provision forces hotels to violate guests’ due process and privacy rights. Covered hotels must place guests on a registry and deny them future accommodation for three years based on unverified accusations of assault or sexual harassment by hotel employees. Guests can do nothing to challenge placement on the blacklist or prevent the denial of accommodations.

Third, I-124’s workplace safety provisions conflict with and are preempted by the Washington Industrial Health and Safety Act (“WISHA”) which grants “sole” authority to the Department of Labor and Industries to promulgate and enforce workplace safety regulations.

II. ASSIGNMENTS OF ERROR

- A. The superior court erred in holding I-124 did not violate the single subject rule.
- B. The superior court erred in holding the American Hotel and

Lodging Association, Inc. and the related state and local hospitality trade associations did not have standing to challenge the blacklisting requirement of I-124.

- C. The superior court erred in failing to strike down the blacklisting requirement for violating constitutional guarantees of privacy and due process.
- D. The superior court erred in holding WISHA does not preempt the workplace safety provisions of I-124.

III. STATEMENT OF THE CASE

National, state, and local associations representing Seattle hotels (collectively AHLA) bring this facial challenge to I-124, the text of which is at Appendix A. According to the four separate statements of “intent” in the measure, I-124 is supposed (1) to protect hotel employees from assault and sexual harassment (SMC 14.25.020), (2) to protect hotel employees from on-the-job injury caused by strenuous work and chemical exposure (SMC 14.25.070), (3) to improve access to affordable healthcare (SMC 14.25.110), and (4) to reduce disruptions to Seattle’s economy resulting from changes in hotel ownership (SMC 14.25.130).

American Hotel and Lodging Association, Inc. is a trade association with over 24,000 members representing every segment of the lodging industry. CP 27-28. It has members in Seattle subject to I-124. CP 28. The Seattle Hotel Association has 59 member hotels in Seattle, some of which are subject to I-124. CP 25. The Washington Hospitality Association represents more than 6,000 members involved in all aspects of

the hospitality industry in the State. *Id.* It too has hotel members in Seattle and subject to I-124. CP 25-26.

I-124 requires hotels with more than 50 rooms to implement changes to their operations, including posting notices; measuring and tracking the square footage cleaned by housekeepers; training employees to maintain and use the required blacklist (including when and how to share it with housekeepers); and changing reservations systems to prevent blacklisted guests from securing new accommodations for three years. CP 26, 28. Only covered hotels face these burdens and costs, which puts them at a competitive disadvantage. *See* SMC 14.25.160. I-124 thus imposes and will continue to impose operational, competitive, and financial burdens on the Seattle hotels belonging to plaintiff associations. CP 26, 28.

AHLA sought declaratory and injunctive relief on December 19, 2016. The superior court decided the case on cross motions for summary judgment on June 9, 2017. AHLA timely appealed.

IV. ARGUMENT

A. I-124 Violates the Single Subject Rule.

The single subject rule is a bedrock principle of the democratic process so deeply rooted that our state and many others have enshrined it

in their constitutions. *See* Wash. Const. art. II, § 19.¹ The rule is intended to “prevent logrolling or pushing legislation through by attaching it to other legislation.” *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207 (2000). When a law contains more than one subject “it is impossible for the court to assess whether either subject would have received majority support if voted on separately,” and the entire measure is invalid. *City of Burien v. Kiga*, 144 Wn.2d 819, 825 (2001) (citing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 200 (1951)). To protect the integrity of our democracy, the single subject rule must mean what it says: legislation can only address a single subject. As Justice Rosellini observed in his dissent in *Fritz v. Gorton*, 83 Wn.2d 275 (1974)—a dissent the Supreme Court unanimously adopted in *Washington Federation of State Employees v. State*, 127 Wn.2d 544 (1995)—courts have to be especially mindful of the risk of logrolling with voter initiatives.

Despite this strong and simple starting principle, the rule’s jurisprudence is anything but. And the problem is not unique to Washington. Courts around the country “have been accused of deciding single subject cases inconsistently, failing to explain the reasoning behind

¹ Legislation like I-124 adopted by initiative in the City must comply with the same single-subject rule as state laws. *See* RCW 35A.12.130; Seattle City Charter art. IV, sec. 7; CP 758 (SMC 7.45.080); *Wash. Fed’n of State Emps. v. State*, 127 Wn.2d 544, 553-54 (1995) (single-subject rule applies to initiatives).

their decisions, permitting substantive legal considerations to influence procedural questions, and imposing their personal beliefs under the guise of the rule's broad language." Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 Pitt. L. Rev. 803, 807 (2006). "Without clear guidelines for resolving single subject disputes, courts may uphold acts that deserve to be invalidated." *Id.* That is what happened here.

The City and the superior court acknowledge that I-124 combines several independent new laws. The City admits the measure has no "heart and soul" such that striking some provisions would not affect the others and that "each of the [initiative's] requirements operates independently of the others." CP 53. The superior court agreed the measure contains "several independent provisions" and "admittedly, [the blacklist] provision is not necessary to implement the other provisions of the Initiative," (CP 344, 347), but it nonetheless upheld the measure. Without a clear framework and consistently applied principles to rely on, the superior court accepted the City's argument that the single subject rule has "evolved" from its earlier robust application, knitted together snippets from prior decisions, and ultimately reached the wrong result. (CP 343). No case holds the single subject rule applies with any less force now than it did earlier in our history. I-124 contains more than one independent subject, violates the single subject rule, and cannot stand.

1. I-124's Title Is Restrictive, Requiring Stricter Scrutiny, Which I-124 Fails.

It matters whether I-124's title is general or restrictive: "If a title is restrictive, it will not be given the same liberal construction as general titles." *Lee v. State*, 185 Wn.2d 608, 621 (2016) (internal quotation marks omitted). A restrictive title "is one where a particular part or branch of a subject is carved out and selected as the subject of the legislation." *State v. Broadaway*, 133 Wn.2d 118, 127 (1997). A restrictive title is "narrow" as opposed to broad; it is of specific rather than generic import. *Id.* If an enactment's title "carves out an area" for legislation, it is restrictive. *Id.* at 127-28. In *Amalgamated Transit*, the Court cited several examples of restrictive titles, including: (1) "[a]n act relating to local improvements in cities and towns ...," *Cory v. Nethery*, 19 Wn.2d 326, 329-31 (1943); (2) "[a]n act relating to the rights and disabilities of aliens with respect to land ...," *DeCano v. State*, 7 Wn.2d 613, 623 (1941); and (3) "[a]n act giving workmen's compensation benefits to persons engaged in hazardous and extrahazardous occupations in charitable institutions," *Swedish Hosp. v. Dep't of Labor & Indus.*, 26 Wn.2d 819, 830-31 (1947). If "[a]n act relating to local improvements in cities and towns" is restrictive, *Corey*, 19 Wn.2d at 329-31, then so is

“Initiative 124 concerns health, safety, and labor standards for Seattle hotel employees.”

The case law regarding what constitutes a general title confirms this result. Courts find a title general when it is broad rather than narrow and generic rather than specific. *Wash. Fed’n*, 127 Wn.2d at 555; *Olympic Motors, Inc. v. McCroskey*, 15 Wn.2d 665, 672 (1942).

In *Amalgamated Transit*, the Court also cited examples of general titles:

(1) “[a]n Act relating to violence prevention,” *In re Boot*, 130 Wn.2d 553, 566 (1996); (2) “[a]n Act relating to tort actions ...,” *Scott v. Cascade Structures*, 100 Wn.2d 537, 546 (1983); and (3) “[a]n Act Relating to Community Colleges...,” *Wash. Educ. Ass’n v. State*, 97 Wn.2d 899, 906-07 (1982). In *State ex. rel Washington Toll Bridge Authority v. Yelle*, the Court found that a title referring to “toll bridges” and “ferry connections” was not general, dealing with the broad topic of a “transportation system.” 32 Wn.2d 13, 27 (1948). The Court stated: “Referring ... to the *title* of the 1945 act, we note that it does not employ any such broad, general term as ‘transportation system,’ but deals only with the specific subject of toll bridges and, at most, highways and connections and approaches thereto.” *Id.* (emphasis in original).

Rather than being guided by *Yelle* and its progeny, the superior court cast aside this long standing precedent, declared the single subject

rule has “evolved,” and looked all but exclusively to a single, recent decision. CP 343 (“[T]he single subject rule has evolved and the immediate case is more analogous to a recent Washington Supreme Court decision related to initiatives regulating labor standards.”). But *Yelle* has never been overruled; the Supreme Court has never held that the test has become less exacting, and there are meaningful differences between I-124’s title and the one in *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770 (2015), relied on heavily by the superior court. The superior court’s approach here—finding a prior case involving a title with some similar features then simply adopting that case’s designation of the title as general—cannot be the way to assess compliance with the single subject rule. If the distinction between restrictive and general titles is to survive—and it should—I-124’s title must be considered restrictive.

Importantly, the City could have given I-124 a general title. I-124’s statement of subject could have been broader, like the one in *Filo Foods*: an initiative that “concerns labor standards for certain employers.” 183 Wn.2d at 783 (quoting voter’s pamphlet). But doing that would have risked running afoul of the subject in title rule (perhaps an unavoidable risk when a measure addresses so many unrelated topics). Instead, I-124’s statement of subject provides: “Initiative 124 concerns health, safety, and labor standards for Seattle hotel employees.” The statement of subject in

Filo Foods is broad: it leaves voters to investigate what industries are covered and it deals with one general subject of regulation—labor standards. I-124’s statement of subject is narrow, identifies the industry affected, and enumerates three specific subjects of regulation—health, safety, *and* labor standards. The same goes for I-124’s concise description: it could have been more general (though again, that would have run the risk the measure would violate the subject in title rule because its addresses so many unrelated topics). On the other hand, it is hard to imagine how within the word limit a description could be more restrictive than the following:

If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.

If I-124’s title is not restrictive, there is nothing left of the distinction between general and restrictive titles.

Not only did the superior court miss the mark on whether I-124’s title is restrictive, it applied the wrong standard for assessing whether

legislation with a restrictive title complies with the single subject rule. The superior court stated that “[e]ven if the title is restrictive, only rational unity among the matters need exist.” CP 344. Not so. The Supreme Court has unequivocally held “where a restrictive title is used, *the rational unity analysis does not apply.*” *Amalgamated Transit*, 142 Wn.2d at 215 n.8 (emphasis added). The superior court also cited *Kiga*, but that case only confirmed that “[o]nce an initiative ballot title is identified as being *general*, [courts] look to the body of the initiative to determine whether a rational unity among the matters addressed in the initiative exists.” 144 Wn.2d at 825-26 (emphasis added). Washington courts repeatedly hold that violations of the single subject rule are found more readily when subjected to the more rigorous analysis required for bills with restrictive titles. *Amalgamated Transit*, 142 Wn.2d at 211. If a measure with a restrictive title contains a subject that is disconnected from the others in it, it will fail single subject scrutiny if that subject does not “‘fall fairly’ within the restrictive language” of the title. *Lee*, 185 Wn.2d at 621. Under that rigorous scrutiny, there is no reasonable way to connect the blacklist provision and the automatic punishment of third party hotel guests to the other subjects of the legislation listed in I-124’s restrictive title, and I-124 is thus invalid.

2. I-124 Fails the Rational Unity Test Applied to Measures with General Titles: The Court Cannot Know if Voters Would Have Approved the Pieces Separately.

I-124 runs afoul of the single subject rule even under the test for bills with general titles, which requires rational unity among the subdivisions of a law. *Kiga*, 144 Wn.2d at 825-26. There is simply no plausible way to connect I-124's unprecedented and controversial blacklist provision to the traditional health, safety, and labor standards that make up the rest of I-124. As the Supreme Court recently reiterated "[t]he key inquiry is whether the subjects are so unrelated that 'it is impossible for the court to assess whether either subject would have received majority support if voted on separately.' If so, the initiative is void in its entirety." *Lee*, 185 Wn.2d at 620 (quoting *Kiga*, 144 Wn.2d at 825). Here, there is no way to know whether Seattleites were voting for the blacklist or the general health, safety, and labor provisions.

In *Amalgamated Transit*, the Supreme Court determined a ballot title was general then found no rational unity between two subjects: (1) reducing automobile license tab fees and eliminating the Motor Vehicle Excise Tax, and (2) providing a method of approving all future tax increases, designed to prevent an increase in taxes to offset the tax decrease accomplished by the elimination of the MVET. 142 Wn.2d at

217. The Court rejected the argument that the tax increase requirement was sufficiently related to the elimination of the MVET, finding “neither subject ... necessary to implement the other.” *Id.* While the Court’s subsequent cases have not all used this approach to rational unity, none has overruled it. Even the superior court admitted the blacklisting provision “is not necessary to implement the other provisions of the Initiative.” CP 347. Unless the *Amalgamated Transit* approach is completely discarded, I-124 cannot pass muster under its approach to rational unity.

Even looking solely through the lens of *Filo Foods*, I-124 does not comply with the single subject rule. In *Filo Foods*, the Court looked at the initiative’s substantive provisions and found them all “reasonably germane” to the subject of labor standards. 183 Wn.2d at 785. That is simply not so for I-124. Unlike the initiative in *Filo Foods*, all of whose provisions related solely to the employer-employee relationship, I-124’s blacklist provision affects the due process and privacy rights of third-parties—strangers to the employer-employee relationship regulated by the other provisions—in a completely novel way. It is impossible to characterize such a radical, new law as “reasonably germane” to health, safety, and labor conditions of hotel employees. The single subject rule has “evolved” to a nullity if a mandate to provide health insurance

coverage for low income employees has sufficient “rational unity” with a law that effectively creates a sex-offender list and bars hotel accommodations for accused hotel guests. Voters were entitled to vote separately on the distinct laws contained I-124. Because the Court cannot possibly know if I-124’s subjects “would have garnered popular support standing alone, [it] must declare the entire initiative void.” *Kiga*, 144 Wn.2d at 828.

B. AHLA has Standing to Challenge I-124.

No one disputes AHLA has standing to challenge I-124 on single subject rule grounds or to challenge Part II as preempted by WISHA. However, the superior court held AHLA lacked standing to challenge the blacklisting requirements of Part I.

AHLA submitted uncontroverted evidence of the operational and financial burdens imposed by Part I of I-124, *see* CP 25-28, and the superior court acknowledged AHLA’s members are directly affected by it.² Despite this, the court held AHLA did not have standing to challenge the blacklisting provision. This was error because AHLA has both direct and third party standing.

²AHLA has associational standing—a fact uncontested by the City and Intervenors. *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977) (“[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”).

1. AHLA Has Direct Standing.

a. The blacklisting provision implicates issues of public importance.

Washington courts impose a low bar to standing in cases involving issues of broad public importance:

Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer.

Wash. Nat. Gas Co. v. Pub. Util. Dist. No 1 of Snohomish Cty., 77 Wn.2d 94, 96 (1969). If there is an important public issue at stake, “even traditional standing to bring a lawsuit is not an absolute bar.” *State v. Watson*, 155 Wn.2d 574, 578 (2005); *see also Farris v. Munro*, 99 Wn.2d 326, 330 (1983).

I-124 claims to pursue four important policy goals: protecting workers from harassment, reducing injuries from strenuous work and chemical exposure, improving access to healthcare, and stabilizing Seattle’s economy. *See* SMC 14.25.020, .070, .110, and .130. But these goals must be pursued in a constitutional manner. AHLA’s challenge to I-124’s blacklisting provision raises fundamental questions about the limits of government power and the appropriate balance between protecting people from harm and the right to due process and privacy.

AHLA's members are required by I-124 to implement its blacklisting provisions. They have a direct interest in the constitutionality of this legislation: it regulates the way members operate their businesses, forcing them to choose between obeying an unconstitutional mandate (and thereby violating guests' due process and privacy rights) or facing civil suits and penalties for noncompliance. *See, e.g., Hetherton v. Sears, Roebuck & Co.*, 652 F.2d 1152, 1156 (3d Cir. 1981); *City of Seattle v. State*, 103 Wn.2d 663, 668–69 (1985) (holding that although the City does not have rights under the equal protection clauses of the state and federal constitutions, it had an interest in the fairness and constitutionality of the annexation process and had standing to raise the equal protection claims of its potential residents).

This case epitomizes what this Court envisioned when it instructed courts to construe the standing doctrine liberally to ensure that they address questions of public importance. *E.g., City of Snoqualmie v. Constantine*, 187 Wn.2d 289, 296 (2016). The superior court's failure to do so was error.

b. AHLA has direct standing to challenge the blacklisting provision under the Uniform Declaratory Judgment Act.

Courts evaluate standing with a two-part test under Washington's Uniform Declaratory Judgment Act ("UDJA"). "First, a party must be

within the zone of interests to be protected or regulated by the statute in question.” *Am. Legion Post #149 v. Wash. State Dep’t of Health*, 164 Wn.2d 570, 593-94 (2008) (internal quotation marks omitted). As acknowledged by the superior court, AHLA falls within the zone of interests regulated by I-124: “I-124 regulates hotels.” CP 351.

“Second, the party must have suffered an injury in fact.” *Am. Legion Post #149*, 164 Wn.2d at 594. “Washington courts have held that additional financial and administrative burdens” constitute sufficient injury under the UDJA. *Benton County v. Zink*, 191 Wn. App. 269, 279 (2015); *see also City of Longview v. Wallin*, 174 Wn. App. 763, 783 (2013). An administrative burden “even if trivial, is nevertheless a concrete and particular burden,” sufficient to confer standing. *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2006 WL 2739309, at *7 (N.D. Cal. Aug. 23, 2006) (holding hotel had standing to challenge an ordinance requiring it to measure the floor space cleaned by each employee on an hour-by-hour basis).³

³When discussing this case, the superior court missed the point: “Plaintiffs claim direct injury by citing to a federal district court case which held that hotels had standing to challenge portions of a minimum wage ordinance, which also required a 5,000 square foot cleaning maximum per day. While the plaintiffs likely have standing to challenge the cleaning maximums, that standing may not be conferred to other provisions.” CP 351. *Woodfin* highlights not that measuring floor space creates a burden but that even minor administrative burdens (e.g., the creation of a list) are enough to confer standing: “The administrative burden of measuring floor space, even if trivial, is nevertheless a concrete and particular burden which Plaintiffs would not otherwise be required to assume absent this Ordinance.” *Woodfin Suite Hotels*, 2006 WL 2739309, at *7.

I-124's blacklisting provision imposes administrative burdens sufficient to confer standing. In relevant part, I-124 states:

A hotel employer *must* record the accusations it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment towards an employee. The hotel employer *must* determine and record the name of the guest ... the hotel employer *shall* compile and maintain a list of all guests so accused. The employer *shall* retain a guest on the list for at least five years from the date of the most recent accusation against the guest, during which time the employer *shall* retain all written documents relating to such accusations.... If an accusation involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer *shall* decline to allow the guest to return to the hotel for at least three years after the date of the incident.... The hotel employer *must* notify any hotel employee assigned to work in guest rooms ... of any guest on the list.

SMC 14.25.040 (emphasis added).

Hotels must develop procedures to implement I-124. At a minimum, the blacklist provision requires hotels to:

- educate employees about the initiative and its requirements;
- designate individuals responsible for receiving accusations, at least one of whom must be scheduled to work at all times;
- establish an investigation protocol and, in the event accusations are made, conduct investigations to identify the alleged perpetrators;
- create a list of guests accused of harassment and develop a system for maintaining the list (and all documents related to each allegation) securely for five years;
- develop and implement a system to warn employees who might clean the room of an accused guest staying at the hotel;

- develop forms for employees to use when making a written accusation of a guest; and
- develop a system for, either manually or automatically through reservations software, ensuring that accused guests (if the accusation was supported by a sworn statement or “other evidence”) are not permitted to return to the hotel for three years.

CP 25-28. The uncontroverted testimony of association witnesses established these facts, and the superior court’s conclusion that AHLA failed to show that the blacklisting requirement “infringes on any interest particular to the Associations or to its members” was error. CP 352.

2. AHLA Also Has Third Party Standing.

“When a person or entity seeks standing to advance the constitutional rights of others, we ask two questions: first, has the litigant suffered some injury-in-fact, adequate to satisfy Article III’s case-or-controversy requirement; and second, do prudential considerations which we have identified in our prior cases point to permitting the litigant to advance the claim?” *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623 n.3 (1989). With respect to the prudential considerations, courts consider two issues. First, does the party bringing the claim have a close relationship with the party whose rights it is asserting? *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 114-16 (1976); *State v. Herron*, 183 Wn.2d 737, 746 (2015). Second, is there some hindrance to the third party’s ability to protect its own interest? *Herron*, 183 Wn.2d at 746.

Encompassed within this inquiry is an evaluation of whether the party bringing the claim will zealously represent the interests of the third party. *See, e.g., Sec’y of State v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984). These considerations “are not constitutionally mandated, but rather stem from a salutary ‘rule of self-restraint’ designed to minimize unwarranted intervention into controversies where the applicable constitutional questions are ill-defined and speculative.” *Craig v. Boren*, 429 U.S. 190, 193 (1976).

a. AHLA has suffered injury-in-fact.

As previously discussed, the evidence establishes that I-124 imposes financial and administrative burdens only on covered hotels, some of whom are on AHLA’s members. The “probable economic injury resulting from [I-124] alter[s] competitive conditions [and is] sufficient to satisfy the Article III ‘injury-in-fact’ requirement.” *Clinton v. City of New York*, 524 U.S. 417, 433 (1998); *see also City & County of San Francisco v. U.S. Postal Serv.*, No. C 09-1964 RS, 2011 WL 5079582, at *6 (N.D. Cal. Oct. 25, 2011), *aff’d*, 546 F. App’x 697 (9th Cir. 2013) (financial burden sufficient to constitute injury-in-fact); *Thomas More Law Ctr. v. Obama*, 720 F. Supp. 2d 882, 889 (E.D. Mich. 2010), *aff’d*, 651 F.3d 529 (6th Cir. 2011) (financial pressure experienced by plaintiffs sufficient to constitute injury-in-fact); *Ben Oehrleins & Sons & Daughter, Inc. v.*

Hennepin County, 115 F.3d 1372, 1379 (8th Cir. 1997) (having to pay higher fees sufficient indirect economic injury to constitute injury-in-fact); *Lee v. Oregon*, 869 F. Supp. 1491, 1495 (D. Or. 1994) (financial impact on physician's practice sufficient injury-in-fact).

AHLA's injuries are not, as the superior court asserted, "merely speculative." CP 352. The court said there was no way to know "how many, if any, guests will be on the list or even how many potential guests will be excluded from Seattle hotels each year." CP 353. But this is irrelevant. *See, e.g., Associated Builders & Contractors, Golden Gate Chapter Inc. v. Baca*, 769 F. Supp. 1537, 1542 (N.D. Cal. 1991) ("Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect."). The hotels are required, now, to create and implement a system conforming to I-124's directives, regardless of when the first allegation of sexual harassment is made. Moreover, the assertions and evidentiary submissions of the Intervenor foreclose the court's speculation that the hotels' registries of accused harassers may remain empty: "sexual harassment of hotel employees—especially room attendants—is so rampant that studies have found it has essentially been normalized."

b. Hotels have a close relationship with guests.

In 1976, the U.S. Supreme Court recognized a vendor's relationship with a vendee is a "close relationship" for purposes of third party standing. *See Craig*, 429 U.S. at 195. In *Craig*, an Oklahoma statute prohibited the sale of nonintoxicating 3.2% beer to males under the age of 21 and females under the age of 18. *Id.* at 191-92. A beer vendor brought suit claiming "such a gender-based differential constitutes a denial to males 18-20 years of age of the equal protection of the laws in violation of the Fourteenth Amendment." *Id.* at 192. The Supreme Court held the vendor had standing to bring this claim: "*[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function.*" *Id.* at 195 (emphasis added). Subsequent cases follow suit. *See, e.g., Kaahumanu v. Hawaii*, 682 F.3d 789, 796-98 (9th Cir. 2012) (wedding professionals have third party standing to assert claims on behalf of individuals seeking wedding permits); *Totes-Isotoner Corp. v. United States*, 594 F.3d 1346, 1351-52 (Fed. Cir. 2010) (glove manufacturer had standing to raise claims on behalf of its customers); *Hejira Corp. v. MacFarlane*, 660 F.2d 1356, 1360 (10th Cir. 1981) (sellers of drug paraphernalia had standing to assert

claims on behalf of purchasers of drug paraphernalia); *Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Auth.*, 335 F. Supp. 2d 275, 284 (D. Conn. 2004) (third party standing where a ferry company raised claims on behalf of its passengers); *Czajkowski v. Illinois*, 460 F. Supp. 1265, 1275-76 (N.D. Ill. 1977) (retailers had standing to assert claims based on the rights of their customers).

In this case, AHLA's members—the vendors—are acting as advocates for the rights of hotel guests—the vendees. The superior court did not acknowledge this “close relationship.” Instead, it held that “a common business transaction between the third party guests and the hotels . . . is insufficient and too attenuated to establish the type of relationship necessary to meet this factor.” CP 353. That was error. Even if a “common business transaction” were not enough (and it is enough, *see supra*), the relationship here is closer and more substantial than that between a seller and would-be buyers of 3.2% beer. By law and custom, hotels must provide accommodations to all who seek them, without discrimination, and to protect the privacy of guests who eat, sleep, shower, dress, etc., in the rooms provided. *See Minnesota v. Olson*, 495 U.S. 91, 99 (1990). In that case, the Supreme Court recognized this expectation of privacy:

From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend. Society expects at least as much privacy in these places as in a telephone booth—a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable.

Id. (internal quotation marks omitted).

I-124 forces AHLA hotels to choose between violating the initiative and violating the privacy and due process rights of their guests. Time after time, courts recognize this type of relationship is sufficient to confer standing, even under the more rigorous Article III standing test used by the federal courts. *See, e.g., Kaahumanu*, 682 F.3d at 797.

c. Obstacles hinder hotel guests from protecting their own rights.

“If there is some genuine obstacle to [an individual's assertion of his own rights,] the third party's absence from court loses its tendency to suggest that his right is not truly at stake, or truly important to him, and the party who is in court becomes by default the right's best available proponent.” *Singleton*, 428 U.S. at 116. Three significant barriers will hinder hotel guests from bringing claims here:

First, most would-be Seattle visitors undoubtedly do not expect to be wrongly accused of harassment by hotel employees (and thus cannot be expected to bring a suit in advance). And because I-124 does not require notice to accused guests, months or years may pass before a guest learns he or she was accused of harassment or assault and placed on a registry. Without notice, a hotel guest is powerless to respond to the allegation (though as noted below, even with notice, a guest will never be able to have his or her name removed from a blacklist once placement there is triggered by an accusation).

The superior court dismissed the argument that guests will not know about accusations, incorrectly observing: “[AHLA does] not assert that guests will not know of the potential injury, in fact [it] argue[s] the opposite: that the list will not be confidential or private . . . and subject to public disclosure.” CP 354. The court misunderstood the issue. AHLA demonstrated (a) there is no requirement that a guest be informed of his or her placement on a blacklist and (b) once the list is disclosed to other hotel employees, City inspectors, or the media, it will be too late to prevent the harm.

Second, even if the City adopts rules requiring notice to an accused guest, the stigma of being accused and placed on the registry (which is automatic) will prevent many individuals from suing because a suit would

draw even more attention to the accusation. Courts recognize this obvious hindrance and allow third party standing in these circumstances. *See, e.g., Pa. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 290 (3d Cir. 2002) (“The stigma associated with receiving mental health services presents a considerable deterrent to litigation.”).

Third, financial constraints will prevent many individuals from bringing suit. City rule makers may decide to require notice, but the mandatory language of the blacklisting and exclusion provisions of I-124 do not allow for rules that would permit a hotel to remove someone from the registry of accused guests or to provide accommodation to someone barred by the automatic operation of Part I. *See Dep’t of Ecology v. Theodoratus*, 135 Wn.2d 582, 600 (1998).

Once listing and exclusion are triggered by an accusation, there is no way to un-ring the bell, and a guest’s only recourse would be to challenge the constitutionality of the measure after the fact. This poses a significant financial hindrance, sufficient to justify allowing AHLA to bring the claims. *E. Coast Test Prep LLC v. Allnurses.com, Inc.*, 167 F. Supp. 3d 1018, 1022 (D. Minn. 2016) (“A sufficient hindrance may include ... facing ‘the economic burdens of litigation.’”) (quoting *Powers v. Ohio*, 499 U.S. 400, 415 (1991)).

d. AHLA is an adequate advocate.

AHLA has the resources to bring the challenge, and it “can reasonably be expected to properly frame the issues and present them with the necessary adversarial zeal.” *Sec’y of State*, 467 U.S. at 956. “The activity sought to be protected is at the heart of the business relationship between [AHLA] and its [guests].” *Id.* at 958. AHLA will be “as effective a proponent of its customers’ rights as they would be.” *Hong Kong Supermarket v. Kizer*, 830 F.2d 1078, 1081 (9th Cir. 1987).

C. Part I of I-124 Forces Hotels to Violate the Constitutional Rights of Their Guests and Is Thus Void.

The superior court should have held AHLA had standing to challenge the blacklisting requirement, and it should have struck it down as unconstitutional under both the state and federal constitutions.

It has long been understood that a person has an interest in his or her reputation: “he that filches from me my good name robs me of that which not enriches him, and makes me poor indeed.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 12 (1990) (quoting William Shakespeare, *Othello*, act 3, sc. 3). A person’s interest in an untarnished reputation is protected by both the Washington and U.S. Constitutions. Therefore, “[w]here a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.” *Wisconsin v. Constantineau*, 400 U.S. 433, 437

(1971). Part I of I-124 requires hotels to violate the rights of their guests, because it requires hotels to punish accused guests, expose them to stigma, and tarnish their reputations without providing any way for a guest to contest a charge or avoid the automatic punishment.

Specifically, Part I requires hotels to maintain and share with hotel employees and the City a list of guests who have been accused of assault or sexual harassment. The list lumps together guests accused of serious violent crimes with those accused of allegedly offensive words, gestures, expressions, etc. And if the accuser is willing to sign a statement or provide “other evidence” of the alleged misconduct, the hotel must deny the guest accommodations for three years. Once listed or barred, a hotel guest has no way to confront the accuser and no way to get removed from the list. Moreover, because the accuser does not have to produce any supporting evidence (or even sign a statement verifying the allegation) and because neither the City nor the hotel is empowered to investigate or otherwise adjudicate an accusation before putting a name on the blacklist, mistaken (or false) accusations are inevitable. Thus, as explained below, Part I of I-124 violates the privacy and due process rights of hotel guests under the Washington and U.S. constitutions.

1. I-124 Violates a Hotel Guest’s Right to Privacy under the Washington Constitution.

I-124 interferes with the right to privacy protected by the Washington Constitution. Under article I, section 7, “No person shall be disturbed in his private affairs . . . without authority of law.” This right to privacy protects against disclosure of intimate personal information. *Serv. Emps. Int’l Union Local 925 v. Freedom Found.*, 197 Wn. App. 203, 221-22 (2016). When determining whether this right has been violated, the court engages in a two-part analysis, asking first whether the “action complained of constitutes a disturbance of one’s private affairs,” and, second, whether the authority of law justifies the intrusion. *State v. Surge*, 160 Wn.2d 65, 71 (2007).

a. Placement on the blacklist interferes with a person’s “private affairs” (and causes real harm).

Placing a guest on the blacklist constitutes “a disturbance of [his or her] private affairs.” I-124 requires hotels to record and publish (to hotel employees and the City) unsubstantiated allegations of sexual misconduct — information that is unquestionably about an individual’s “private affairs,” in violation of art. I, sec. 7.

In *Bellevue John Does 1-11 v. Bellevue School District #405*, 164 Wn.2d 199 (2008), the Washington Supreme Court evaluated the disturbance of the right to privacy in a similar context. Certain Bellevue

teachers had been accused of sexual misconduct. The Seattle Times sought their names through a public records request. The Supreme Court held the Times had no right to this information. Two of the Court's conclusions are particularly germane. First, it held "[t]he mere fact of the allegation of sexual misconduct toward a minor may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred." *Id.* at 215. Second, it held "[t]he fact that a teacher is accused of sexual misconduct is a 'matter concerning the private life'" and therefore the accused "teachers have a right to privacy in their identities." *Id.* at 215-16 (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 135 (1978)). In other words, "the public has no legitimate interest in finding out the identity of someone accused of an unsubstantiated allegation of sexual misconduct." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 415 (2011).

Under these authorities, I-124 violates hotel guests' right to privacy. The initiative requires a hotel to place a guest on a blacklist if an employee accuses him of harassment, even if the employee declines to sign a statement verifying the allegations. Nothing may be done to verify the allegation first; listing the guest is mandatory after an accusation.

This blacklist is not confidential or private.⁴ To the contrary, hotels are required to notify “any hotel employee assigned to work in guest rooms ... of any guest on the list ... who is staying at the hotel.” SMC 14.25.030(C). The City will have access to any such lists to monitor compliance and to investigate alleged violations of the ordinance under SMC 14.25.150(D), and Washington’s Public Records Act makes such records public. RCW 42.56.001 *et seq.*

Because a hotel has no right to investigate the validity of a report before putting a guest on the blacklist, and because there is no way for a guest to prevent his or her name from appearing on the list once accused, the accusations available to the public have the potential to be largely inaccurate (and always will be unadjudicated). The affected guest is left with no power to clear his or her name and must simply watch as false or damaging information is spread throughout the community.

The potential harm can be seen from a similar real-world example. In 2011, Yale’s quarterback, Patrick Witt, was accused of sexual assault. In that case, the accuser never filed a complaint, never went to the police, and never offered any evidence. In the words of Witt: “My summer

⁴ Under I-124 14.25.060(C), before a hotel reports an incident to law enforcement, the employee must consent, and under .150(D)(2), the City must promulgate rules protecting “the identity and privacy rights of employees who have made complaints,” demonstrating that even the sponsors of the ordinance recognize that involvement in allegations involving sexual misconduct is a sensitive issue.

employer and the NFL certainly couldn't understand it, and the media flat out didn't care—the words 'informal complaint' were all that was needed to establish my guilt in their eyes." Patrick Witt, *A Sexual Harassment Policy That Nearly Ruined My Life*, Boston Globe (Nov. 3, 2014), <https://www.bostonglobe.com/opinion/2014/11/03/sexual-harassment-policy-that-nearly-ruined-life/hY3XrZrOdXjvX2SSvuciPN/story.html> (last visited Feb. 6, 2017). Witt was forced to withdraw his Rhodes Scholarship application after being announced as a finalist, and his employer rescinded his job offer. *Id.* He's had to "address it with every prospective employer whom [he's] contacted, with every girl that [he's] dated since, and even with Harvard Law School during [his] admissions interview." *Id.* Like the blacklist required by I-124, Yale's "informal 'process' begins and ends at the point of accusation; the truth of the claim is immaterial." *Id.*

Not only is the harm from false or erroneous accusations serious, it is also reasonably likely that the blacklisting mechanism would be abused. The risk of a false accusation is present for any guest, but it is higher for celebrities, elected officials, and other public figures, as former Vice President Gore experienced at a Portland Hotel in 2006. *See e.g.*, Gore Was Accused of Sexual Advances, N.Y. Times (June 23, 2010),

www.nytimes.com/2010/06/24/us/politics/24gore.html?mcubz=3; Naimah Jabali-Nash, Al Gore Cleared; Former VP Baffled by Sex Assault Allegations, CBS News (August 3, 2010), <https://www.cbsnews.com/news/al-gore-cleared-former-vp-baffled-by-sex-assault-allegations/>.

b. The authority of law does not justify this intrusion.

The “authority of law” does not justify the intrusion worked by I-124 because the public has no legitimate interest in the list of accused guests because the allegations are unverified. *Bellevue John Does*, 164 Wn.2d at 216-17 (only when a complaint is substantiated or results in some sort of discipline, does a public employee lose a right to privacy in the complaint). Making accusations of misconduct public is only justified when the public has a legitimate interest in the information, and the public has a legitimate interest *only when the accused has been afforded due process*. *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1060 (9th Cir. 2012) (holding bill requiring registration as sex offenders could only be constitutionally applied to those who “have been convicted of a sex offense or found as the result of a judicial hearing to have committed a sexually motivated crime, with all the attendant procedural protections guaranteed by [the state’s] criminal justice system”). Here, because accused guests have no mechanism to challenge accusations and prevent

appearing on a list based on false or mistaken allegations, I-124 violates their right to privacy.

2. I-124 Violates the 14th Amendment

Under the U.S. Constitution, the 14th Amendment protects the rights to due process and privacy. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973). When an action by government threatens to tarnish a person's reputation, he or she has a constitutional right to notice of the threat and a chance to clear his or her name. *Ulrich v. City & County of San Francisco*, 308 F.3d 968, 982 (9th Cir. 2002) (quoting *Bollow v. Fed. Reserve Bank*, 650 F.2d 1093, 1100 (9th Cir. 1981)); *Nguyen v. State, Dep't of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 523-24 (2001). This right to due process is triggered whenever the government action, such as placement of a person's name on a list, (1) causes social stigma and (2) alters a "right or status previously recognized by state law." *Paul v. Davis*, 424 U.S. 693, 711 (1976) (adopting this "stigma plus" test). "Where these elements exist," a person is "entitled to notice and a hearing to clear his name." *Ulrich*, 308 F.3d at 982 (quoting *Bollow*, 650 F.2d at 1100); *Nguyen*, 144 Wn.2d at 523-24.

I-124's blacklisting requirement satisfies both factors of *Paul's* "stigma plus" test: (1) it causes social stigma, and (2) it interferes with a person's interest in staying at his or her chosen hotel—an interest

recognized by state law and a right enjoyed by all would be guests, until they are placed on the blacklist, which immediately deprives them of this freedom without any process at all.

a. Being placed on a blacklist will damage the name and reputation of hotel guests.

There is no doubt being placed on a list of hotel guests accused of assault and sexual harassment stigmatizes the person listed. *See Brown v. Montoya*, 662 F.3d 1152, 1169 n.11 (10th Cir. 2011) (“Placing a person’s name on a public registry suffices as a public statement for the purposes of the stigma plus test.”); *Smith v. Doe*, 538 U.S. 84, 98 (2003) (quoting Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 Mich. L. Rev. 1880, 1913 (1992) (colonial punishment using labeling was designed to make the offender “suffer ‘permanent stigmas, which in effect cast the person out of the community’”).

b. The blacklist interferes with an interest previously recognized by the state.

The “plus” factor of the stigma plus test asks whether the government action interferes with a tangible interest created by the state. *In re Meyer*, 142 Wn.2d 608, 620-21 (2001). A tangible interest need not rise to the level of a property right. In *Constantineau*, the police chief prepared a list of problem drinkers to be posted at bars and liquor stores, which resulted in the blacklisted persons being unable to purchase alcohol. 400 U.S. at 435. As the Court explained in *Paul v. Davis*, the operation of

the list to prevent the plaintiff from buying alcohol “significantly altered [plaintiff’s] status as a matter of state law, and it was that alteration of legal status, which combined with the injury resulting from the defamation, justified the invocation of procedural safeguards.” 424 U.S. at 708-09.

In this case, I-124 interferes with the interest in obtaining public accommodation of a person’s choosing. This interest is at least as significant as the interest in buying alcohol recognized in *Constantineau*. Moreover, Washington law expressly recognizes the importance of fair access to public accommodation. In RCW 49.60.215, the Legislature recognized the right of all persons to secure accommodations without discrimination on the basis of membership in a list of protected classes. Impairing the interest in securing accommodation in a hotel of one’s choice is satisfies the “plus” factor under stigma-plus test.

Because I-124’s blacklisting provision stigmatizes accused guests and burdens their right to obtain public accommodation on the same terms as others without due process, it violates the 14th Amendment.

c. The City cannot compel hotels to engage in unconstitutional law enforcement.

The government cannot compel unwilling citizens to do that which it cannot do itself. Imagine the City keeping a list of people who were

merely accused of a crime and then dispatching the police to bar those people from entering into a hotel. Such activity would be enjoined immediately because of the obvious violation of the due process rights of the accused. The City cannot, consistently with the 14th Amendment, prohibit people merely accused of harassment (by a hotel employee or anyone else) from staying in City hotels. Likewise the City cannot accomplish this same result by requiring local businesses to enforce the rule. In the court below, the Intervenors defended Part I of the Ordinance by focusing almost exclusively on whether the required blacklist would become public or not. As explained above, disclosure of the list to hotel employees and the City is sufficient publication to violate a guest's right to privacy, but regardless of whether the list is published or not, I-124 requires hotels to deny accommodation to guests based solely on unverified, unadjudicated allegations of misconduct. Since the City lacks the power to do this, it is equally powerless to require a citizen or a hotel to do so. *See, e.g., Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 838 (9th Cir. 1999); *United States v. Clegg*, 509 F.2d 605, 609–10 (5th Cir. 1975). This is true whether or not the lists are made public.

3. The Harms Caused by I-124 are Not Speculative.

The City and Intervenors will argue the blacklist requirement is not ripe for adjudication because the City has not yet written implementing

rules and the harms may never occur. But rules cannot fix the constitutional problems inherent in I-124, and courts need not wait until injury occurs when the threatened harm will be caused by an unconstitutional law or government action. *See Associated Builders & Contractors, Golden Gate Chapter Inc. v. Baca*, 769 F. Supp. 1537, 1542 (N.D. Cal. 1991) (“Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect.”); *Commonwealth v. Donahue*, 626 Pa. 437, 450 (2014) (“The fact that OOR has not engaged in official rulemaking with respect to its interpretation of Section 901 is a distinction without a difference. By setting forth and defending its interpretation of Section 901, OOR’s conduct under the facts herein adversely, directly and immediately impacts OG, thus conferring on OG standing to challenge OOR’s interpretation in declaratory judgment.”) (citations omitted)).

Here, I-124 requires hotels to keep lists of accused guests and to bar some of them from the hotel for three years, even if the accuser declines to file a police report. The City may adopt clarifying or implementing rules, but it has no power to repeal or change the initiative’s mandate that such accused guests be listed or barred automatically. “It is well settled that administrative rules cannot amend or change legislative

enactments.” *Kabbae v. Dep’t of Soc. & Health Servs.*, 144 Wn. App. 432, 443 (2008).

D. WISHA Preempts Part II of I-124.

Seattle voters’ passage of Part II of I-124 (SMC 14.25.070-100) appears to be the first time a Washington municipality has enacted its own workplace safety regulations and enforcement scheme. The stated intent of the workplace safety part of I-124 is “to protect hotel employees from on-the-job injury.” SMC 14.25.070. It requires hotels

- To “provide and use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe”;
- To protect employees from chemical hazards; and
- To limit housekeeping services to 5,000 square feet of guest rooms cleaned per housekeeper eight-hour workday.

SMC 14.25.080, -090, -100. I-124 authorizes the Office of Civil Rights to investigate violations and empowers the Office of Labor Standards to promulgate further workplace safety rules. SMC 14.25.150(A). It also creates a private right of action for enforcement and damages. SMC 14.25.150(C). Such local assertion of workplace safety rules undermines the uniform statewide regime intended by the Washington legislature.

The State legislature enacted the Washington Industrial Safety and Health Act to create a comprehensive, state-controlled program for promulgating and enforcing workplace safety rules. RCW 49.17.010.

WISHA made Washington's Department of Labor & Industries (L&I) the "sole" agency responsible for regulating workplace safety, unless L&I delegates some of that authority through an interlocal agreement. RCW 49.17.270. If cities could act independently to regulate workplace safety (as Seattle claims here), the result would be a patchwork quilt of workplace safety regimes, creating confusion for employers and employees about which regulations apply at a particular workplace and who is in charge of enforcing them. That would undermine Washington's intent to centralize workplace safety regulation at the State level and to encourage voluntary employer participation in State sponsored workplace safety efforts.

As explained below, WISHA thus preempts municipal regulation of workplace safety such as SMC 14.25.070-100. A state statute preempts a local ordinance if state law occupies the field to be regulated. *Brown v. City of Yakima*, 116 Wn.2d 556, 559 (1991); *Lawson v. City of Pasco*, 168 Wn.2d 675, 679 (2010). Such "field preemption" occurs when there is an *express* legislative intent to occupy the entire field of regulation. *Brown*, 116 Wn.2d at 560. It also occurs where the comprehensiveness of the state regime and the "facts and circumstances upon which [it] was intended to operate" *implies* the legislature's intent to occupy the field. *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561 (2001) (quoting

Brown, 116 Wn.2d at 560); *see HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477 (2003). Finally, preemption also occurs where a state statute and municipal ordinance *conflict*. *Brown*, 116 Wn.2d at 559.

1. The Superior Court Analyzed Preemption Incorrectly.

For reasons not clear from the opinion, the superior court conducted an extensive analysis of art. II, sec. 37 of the state constitution (requiring amending legislation to set out in full the text of the law being changed) and federal preemption of state law, neither of which is implicated here. CP 357-61. The court then held, with almost no pertinent analysis, that WISHA “reveals no preemptive language” prohibiting local regulation of workplace safety. According to the superior court, L&I had “sole” authority only over the enforcement of the state statute itself, and the city is free to regulate workplace safety so long as it passes and enforces its own ordinance (which must be more protective of employees than the state rules). CP 361. But this misstates preemption doctrine. This Court has long recognized that field preemption applies to the interests regulated by the statute, not narrowly to the statute itself. “[Municipal] power ends when the legislature adopts a law concerning a particular interest, unless the legislature has left room for concurrent jurisdiction.” *Heinsma*, 114 Wn.2d at 560. As demonstrated

below, under the appropriate preemption analysis, WISHA preempts Part II of I-124.

2. WISHA Expressly Preempts SMC 14.25.070-100.

WISHA's plain language expresses the legislature's intent to preempt local regulation of the field of workplace safety. WISHA preempts Part II of I-124 based on "the plain meaning of the words used in the statute." *City of Seattle v. Williams*, 128 Wn.2d 341, 348 (1995) (looking first to wording of statute in examining preemption issue).

WISHA states:

[L&I] shall be the ***sole and paramount administrative agency*** responsible for the administration of the provisions of this chapter, and ***any other agency*** of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any workplace subject to this chapter, ***shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement*** or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter....

RCW 49.17.270 (emphasis added). WISHA made L&I "the sole and paramount administrative agency responsible for the administration of this chapter," *id.*, the purpose behind which was "to create, maintain, continue, and enhance" the workplace safety program in Washington. RCW 49.17.010; *cf Atay v. County of Maui*, 842 F.3d 688, 709 (2016) (holding

legislature intended to preempt counties from regulating invasive species where statute said the state had “*sole administrative responsibility* and accountability for that designated function of invasive species control.” (emphasis added)). The legislature further expressed its intent that L&I “assume the responsibility for the development and enforcement of occupational safety and health standards in *all workplaces* within this state....” RCW 49.17.230 (emphasis added).

WISHA neither grants nor recognizes the broad concurrent jurisdiction over workplace safety claimed by the City here. Many Washington laws include such a provision,⁵ but WISHA does not. Importantly, the federal Occupational Safety and Health Act (“OSHA”)— passage of which prompted the Washington legislature to adopt WISHA— contains a concurrent-jurisdiction provision. *See* 29 U.S.C. § 667(a) (“Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or

⁵ *See, e.g.*, RCW 49.46.820 (“Nothing in [Washington’s minimum wage law] precludes local jurisdictions from enacting additional local fair labor standards that are more favorable to employees....”); *Heesan Corp. v. City of Lakewood*, 118 Wn. App. 341, 354 (2003) (concurrent jurisdiction where Washington nuisance law stated cities had the power “[t]o declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist”); *Rabon v. City of Seattle*, 135 Wn.2d 278, 288 (1998) (concurrent jurisdiction where Washington dangerous dog law stated dogs “shall be regulated only by local, municipal, and county ordinances” and “[n]othing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs”).

health issue with respect to which no standard is in effect....”). But the Washington legislature left this out of WISHA.

Further, WISHA specifically carves out one narrow area of regulation—relating to ionizing radiation—for concurrent jurisdiction: L&I “and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter.” RCW 49.17.270. The absence of similar language providing general concurrent jurisdiction to municipalities is telling.

Recognizing L&I might want to grant to local jurisdictions, or municipalities might claim, “inspection, survey, investigation, or ... regulatory or enforcement authority of safety and health standards related to” workplace safety, the legislature directed that municipalities could only exercise such authority “*as provided*” in WISHA, and only pursuant to a formal agreement with L&I under the Interlocal Cooperation Act, *id.* (emphasis added). This structure assures L&I will be able to review and approve any local attempts to regulate workplace safety. If, as the City claims here, WISHA provided municipalities with broad concurrent jurisdiction to regulate workplace safety independent of L&I, this language would be superfluous. *See Tingey v. Haisch*, 159 Wn.2d 652,

669 (2007) (“[A]n interpretation making a statute’s term superfluous must be rejected.”).

Thus, WISHA’s plain language demonstrates the legislature intended the State regime to occupy the field of workplace safety regulation, and municipalities cannot interfere with Washington’s program by enacting their own workplace safety regulations. *See Heinsma*, 144 Wn.2d at 560 (“When the state’s interest is *paramount* or joint with the city’s interest, the city may not enact ordinances affecting the interest unless it has delegated authority.” (emphasis added)).

3. WISHA’s History and Context Imply Preemption.

WISHA’s legislative intent—the “purposes of the statute” and the “facts and circumstances upon which [it] was intended to operate” –also demonstrates the legislature meant the State to occupy the field of workplace safety and preempt local ordinances. *Heinsma*, 144 Wn.2d at 561 (quoting *Brown*, 116 Wn.2d at 560). The legislature enacted WISHA to retain state “control” of the workplace safety program and to “keep safety regulations within *state* jurisdiction, and the regulatory powers *within one agency*.” Report of Standing Committee on WISHA, Feb. 2, 1973; Report by Committee on Labor, Industrial Safety and Health Act, Feb. 14, 1973 (emphasis added).

When OSHA became federal law in 1970, it preempted states' jurisdiction over workplace safety unless a state enacted a regulatory scheme approved by the U.S. Secretary of Labor. 29 U.S.C. § 667; *see also* Jane Rae Hotneier, *An Alternative to Federal Preemption: The Washington Plan*, 9 Gonz. L. Rev. 615, 615 (1974). Washington acted swiftly, becoming one of the first states to enact an OSHA-approved plan by passing WISHA. *Id.*⁶ In so doing, the legislature stressed how important it was that the state not “lose control of the [workplace safety] program.” Report of Standing Committee on WISHA, Feb. 2, 1973 (noting a “principal argument” for the bill); *see also* Report by Committee on Labor, Industrial Safety and Health Act, Feb. 14, 1973 (listing WISHA’s advantages as “keep[ing] safety regulations within state jurisdiction, and the regulatory powers within one agency” and “consolidat[ing]...the rules and regulations of existing statute under one jurisdictional agency... the department of labor and industries.”). And, as

⁶ Washington has long been home to both dangerous occupations and state concern for industrial safety. The state has a constitutional requirement that it protect “persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.” Wash. Const. art. II, § 35; Mark O. Brown, *A Discussion of the Washington Industrial Safety and Health Act of 1973*, 17 U. Puget Sound L. Rev. 245, 248 (1994). L&I – formed in 1921 – has had a safety division since 1922, and began making workplace safety rules in 1941. *Id.*; *see also* Alan S. Paja, *The Washington Industrial Safety and Health Act: Wisha’s Twentieth Anniversary, 1973-1993*, 17 U. Puget Sound L. Rev. 259, 261 (1994) (recounting pre-WISHA history of workplace safety laws administered by Washington state).

noted above, the legislature decided not to follow OSHA's example and declined to provide for local concurrent jurisdiction.

WISHA empowered L&I to enact any rules necessary to pass OSHA approval so the state could "assume the responsibility for the development and enforcement of occupational safety and health standards *in all workplaces within this state* subject to the legislative jurisdiction of the state of Washington." RCW 49.17.230 (emphasis added).

WISHA, as a result, is a wide-ranging and comprehensive law intended "to create, maintain, continue, and enhance the industrial safety and health program of the state" RCW 49.17.010. WISHA empowers the director of L&I to "make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment." RCW 49.17.040. WISHA entrusts L&I to manage workplace inspections, to establish fines, to refer criminal violations to prosecutors, to shut down unsafe work practices, and to investigate and prosecute discriminatory actions against workers. RCW 49.17.100, 49.17.120, 49.17.180, 49.17.190(6), 49.17.130, 49.17.160.

WISHA also contains a detailed program for engaging employers proactively to improve workplace safety. It provides for consultative services, promotes confidential research regarding occupational injuries, calls for dissemination of informational, educational, and training

materials, and allows employers to request variances from safety standards. *See* RCW 49.17.210, 49.17.250, 49.17.050(7), 49.17.080-090.

In addition, the legislature put L&I in charge of both workplace safety *and* workers' compensation. RCW 51.04.020 and RCW 49.17.040. It was surprisingly rare for state agencies to oversee both of these fields. *See* Brown, 17 U. Puget Sound L. Rev. at 248-250 (noting in 1994 that Washington was the only state with this arrangement). The centralization of these functions has resulted in better tracking of worker injury data and better targeting of enforcement inspections and assistance programs. *Id.*

The comprehensiveness of WISHA's workplace safety program implies state preemption. *See City of Spokane v. Portch*, 92 Wn.2d 342, 348 (1979) (finding state intended to preempt field of criminal obscenity law based in part on the "comprehensiveness" of the state law "and the great detail with which it [was] set out...."). WISHA provides authority for over a hundred regulations, none of which can be enacted, modified, or repealed without "a public hearing in conformance with the administrative procedure act and the provisions of" RCW 49.17." *See* RCW 49.17.040. WISHA is more than an extensive scheme of workplace safety regulations and rules. It is a holistic program for improving workplace safety in every workplace in Washington, and it preempts local attempts at regulation like SMC 14.25.070-100.

4. SMC 14.25.070-100 Conflicts with WISHA.

Even absent express and implied statutory preemption of all local attempts to regulate workplace safety, WISHA preempts SMC 14.25.070-100 because those provisions conflict with the state law. *Cannabis Action Coal. v. City of Kent*, 180 Wn. App. 455, 481 (2014).

The superior court addressed only one of the asserted conflicts—the City’s creation of a private right of action to enforce workplace safety rules despite WISHA’s determination that only L&I should enforce workplace safety rules. The superior court concluded without analysis that a parallel private right of action was not a problem if it was available for violations of SMC 14.25 rather than for violations of state rules. CP 362. The superior court also overlooked that Seattle never entered an interlocal agreement with L&I to allow its regulation of workplace safety. Both of these decisions were error.

The ordinance contains several regulations identical to WISHA rules, in effect giving Seattle’s Office of Civil Rights authority to investigate—and individuals the right to sue for—violations of state rules. *Compare* SMC 14.25.080-90 *with* WAC 296-800-11010, WAC 296-800-11040. But WISHA vested L&I with exclusive authority over these issues for all employers statewide. See WAC 296-900-12015 *et seq.* (detailing procedures for employee complaints filed with L&I); RCW 49.17.190

(setting criminal penalties for enforcement); RCW 49.17.180(8) (authorizing L&I to recover civil penalties); RCW 49.17.170 (authorizing L&I to seek injunctions). Allowing private suits for alleged violations of workplace safety rules conflicts with recognized WISHA policy. *See Nat'l Elec. Contractors Ass'n, Cascade Chapter v. Riveland*, 138 Wn.2d 9, 35–36 (1999) (“Nowhere in the language of WISHA, its legislative history, or in the statutory declaration of purpose and policy in the act itself is there the slightest hint the Legislature intended WISHA to create a private right of action . . . for violation of the act” (Talmadge, J., dissenting)); *cf. Kelley v. Howard S. Wright Const. Co.*, 90 Wn.2d 323, 334–35 (1978) (OSHA “and the regulations promulgated thereunder therefore do not create a duty to employees enforceable in a private cause of action.”).

In addition, as explained above, WISHA requires that any regulation and enforcement must be pursuant an interlocal agreement. RCWW 49.17.270. No one disputes the City did not obtain the required interlocal agreement before adopting its new workplace safety regulations.

CONCLUSION

For the above-stated reasons, this Court should reverse the superior court and enter judgment invalidating I-124.

RESPECTFULLY SUBMITTED this 21st day of September, 2017.

Davis Wright Tremaine LLP

By s/ Michele Radosevich

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CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date, I caused to be served in the manner noted below, a copy of the Opening Brief of American Hotel & Lodging Association, Seattle Hotel Association, and Washington Hospitality Association on the following:

Via E-file Notification

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Executed this 21st day of September, 2017, in Seattle, Washington.

s/ Heather Persun
Heather Persun

APPENDIX “A”



Seattle Protects Women.

FILED CITY OF SEATTLE 2016 MAY -6 PM 1:54 CITY CLERK

Please Return Your Initiative Petition or Contact Us At: Seattle Protects Women - Unite Here Local 8 for Yes on 124 2800 First Avenue, Room 3, Seattle WA 98121 (206) 963-6458 | abby@8.unitehere.org | www.seattleprotectswomen.org

INITIATIVE 124

INITIATIVE PETITION FOR SUBMISSION TO THE SEATTLE CITY COUNCIL. To the City Council of The City of Seattle:

We, the undersigned registered voters of The City of Seattle, State of Washington, propose and ask for the enactment as an ordinance of the measure known as Initiative Measure No. 124 entitled:

Initiative 124 concerns health, safety, and labor standards for Seattle hotel employees.

If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.

Should this measure be enacted into law?

Yes No

A full, true and correct copy of which is included herein, and we petition the Council to enact said measure as an ordinance; and, if not enacted within forty five (45) days from the time of receipt thereof by the City Council, then to be submitted to the qualified electors of The City of Seattle for approval or rejection at the next regular election or at a special election in accordance with Article IV, Section 1 of the City Charter; and each of us for himself or herself says: I have personally signed this petition; I am a registered voter of The City of Seattle, State of Washington, and my residence address is correctly stated.

WARNING: "Ordinance 94289 provides as follows: "Section 1. It is unlawful for any person: 1. To sign or decline to sign any petition for a City initiative, referendum, or Charter amendment, in exchange for any consideration or gratuity or promise thereof; or 2. To give or offer any consideration or gratuity to anyone to induce him or her to sign or not to sign a petition for a City initiative, referendum, or Charter amendment; or 3. To interfere with or attempt to interfere with the right of any voter to sign or not to sign a petition for a City initiative, referendum, or Charter amendment by threat, intimidation or any other corrupt means or practice; or 4. To sign a petition for a City initiative, referendum, or Charter amendment with any other than his or her true name, or to knowingly sign more than one (1) petition for the same initiative, referendum or Charter amendment measure, or to sign any such petition knowing that he or she is not a registered voter of The City of Seattle." The provisions of this ordinance shall be printed as a warning on every petition for a City initiative, referendum, or Charter amendment. "Section 2. Any person violating any of the provisions of this ordinance shall upon conviction thereof be punishable by a fine of not more than Five Hundred Dollars (\$500) or by imprisonment in the City Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

(* Only Registered Seattle Voters Can Sign This Petition *)

Table with 4 columns: Petitioner's Signature, Petitioner's Printed Name, Residence Address Street and Number, Date Signed. Rows 1-10.

AN ACT establishing minimum health and safety standards for hotel employees in the City of Seattle.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SEATTLE

Section 1. A new Chapter 14.25 is added to the Seattle Municipal Code as follows:

14.25 HOTEL EMPLOYEES HEALTH AND SAFETY

14.25.010 Findings

The people hereby adopt basic safeguards to protect hotel employees from assault and injury on the job, to improve access to affordable healthcare, and to provide a minimum standard of job security for hotel employees. This measure also includes strong enforcement mechanisms to ensure that hotel owners and operators comply with the law. Providing these protections to hotel employees will make Seattle's economy fairer and more resilient.

Hotel employees are vital contributors to our community. The hospitality industry is a profitable and important component of our economy that receives substantial taxpayer support, including through the \$1.3 billion expansion of the Washington State Convention Center.

However, the hospitality industry has not adequately provided for the safety and security of hotel employees. Due to the unique nature of hotel work, hotel employees are subjected to a higher risk of harassment and violence on the job. Unregulated workloads result in injury rates for hotel housekeepers that are higher than those of custodians. At the same time, hospitality employees have the lowest rate of access to employer-offered health insurance of any industry in the State of Washington and face unaffordable monthly premiums for family healthcare. Frequent property sales, changes in ownership, mergers and acquisitions in the hospitality industry mean that hotel employees face employment disruptions that are wholly beyond their control. As a result, many of Seattle hotel employees are women, immigrants, and people of color, these hazards and instabilities within the hospitality industry exacerbate existing structural inequities experienced by these groups. It is appropriate and necessary to protect employees in the hotel industry - those who clean the rooms, change the sheets, and dice the vegetables - from assault and injury, unreasonable medical costs, and unnecessary job loss.

PART 1 PROTECTING HOTEL EMPLOYEES FROM VIOLENT ASSAULT AND SEXUAL HARASSMENT

14.25.020 Intent

It is the intent of Part 1 of this measure to protect hotel employees from violent assault, including sexual assault, and sexual harassment and to enable employees to speak out when they experience harassment or assault on the job. Hotel employees are often asked to work alone in hotel rooms, which sometimes may be occupied, placing them at risk of violent assault, including sexual assault, and sexual harassment.

14.25.030 Providing panic buttons to hotel employees providing in-room services. A hotel employer shall provide a panic button to each hotel employee assigned to work in a guest room without other employees present, at no cost to the employee. An employee may use the panic button if the employee reasonably believes there is an ongoing crime, harassment, or other emergency in the employee's presence. The hotel employer may cease work and leave the immediate area of perceived danger to await the arrival of assistance, and no adverse employment action may be taken against the employee for so doing.

14.25.040 Protecting hotel employees from violent or harassing hotel guests. A hotel employer must record the accusations it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment towards a hotel employee. The employer must determine and record the name of the guest, if the name of the guest cannot be determined, the hotel employer must determine and record the identifying information about the guest as is reasonably possible. The hotel employer shall compile and maintain a list of all guests so accused. The employer shall retain a guest on the list for at least five years from the date of the most recent accusation against the guest, during which time the employer shall retain all written documents relating to such accusations.

B. If an accusation against a guest under subsection 14.25.040.A involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer shall decline to allow the guest to return to the hotel for at least three years after the date of the incident. No employee may be required to provide such statement.

C. The hotel employer must notify any hotel employee assigned to work in guest rooms without other employees present, prior to starting their scheduled work, of any guest on the list established by subsection 14.25.040.A. The notification shall include the name of the guest, the nature of the accusation, and warn the employee to exercise caution when entering that room during the time the guest is staying in the hotel.

14.25.050 Deterring assault by notifying guests of employee protections. Each hotel shall place a sign on the back of each guest room door, written in a font size of no less than 18 points, that includes the heading "The Law Protects Hotel Housekeepers and Other Employees From Violent Assault and Sexual Harassment," a citation to this Chapter 14.25, and notice of the fact that the hotel is providing panic buttons to its housekeepers, room servers, and other employees assigned to work in guest rooms without other employees present, in compliance with this Chapter 14.25.

14.25.060 Protecting employees who report assault or sexual harassment. An employee who tells the hotel employer the occurrence of an act of violence, including assault and sexual assault, or sexual harassment by a guest shall be afforded the following rights:

A. Upon request, the employer shall be reassigned to a different floor or, if none is available, the employee's job classification, a different work area away from the guest for the entire duration of the guest's stay in the hotel;

B. The hotel employer shall immediately allow the employee sufficient paid time to contact the police and provide a police statement and to consult with a counselor or advisor of the employee's choosing; and

C. The hotel employer, with the consent of the employee, shall report an incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction and shall cooperate with any investigation into the incident undertaken by the agency and any attorney for the complaining employee.

PART 2 PROTECTING HOTEL EMPLOYEES FROM INJURY

14.25.070 Intent

It is the intent of this Part 2 to protect hotel employees from on-the-job injury. Hotel employees suffer an unacceptably high rate of on-the-job injuries from heavy lifting, repetitive tasks, and chemical exposure, and are 40 percent more likely to be injured on the job than all other service sector workers. The provisions of this Part 2 will help to protect hotel employees from such injuries.

14.25.080 Hotel employees must adopt reasonable practices to ensure the safety of hotel employees. Hotel employers must provide and use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe.

14.25.090 Hotel employers must protect their employees from chemical hazards. Hotel employers must:

A. Control chemical agents in a manner that they will not present a hazard to employees;

B. Protect employees from the hazard of contact with, or exposure to, chemical agents; and

C. Provide employees with effective means to protect themselves in their work area at the time of their initial job assignment.

Information must be provided whenever a new physical or health hazard related to chemical agents is introduced into work areas.

14.25.100 Hotel employers must protect hotel employees from injuries. A significant injuries to hotel housekeepers result from the repetitive and strenuous tasks that must be performed in each guest room, including cleaning and restocking of the room. Housekeepers face the highest injury rates of all hotel employees. The repetitive nature of their work, and further increases when housekeepers are required to perform more than ten strenuous guest room cleanings during the day or clean guest rooms at an unsteady pace. Workplace interventions have been found to significantly reduce injury rates for hotel housekeepers.

B. An employer shall not be required to clean guest rooms totaling more than 5,000 square feet of floor space in an eight-hour workday. If an employee performs ten or more strenuous room cleanings in an eight-hour workday, the maximum floor space shall be reduced by 500 square feet for the tenth strenuous room cleaning and for each such strenuous room cleaning thereafter.

C. For an employee cleaning guest rooms for fewer than eight hours per day, the foregoing maximums and reductions shall be prorated according to the actual number of hours worked during the day.

D. If an employee performs cleaning in excess of the square footage allowed by this Section 14.25.100 in a day, the hotel employer shall pay such hotel employee at least time-and-a-half the employee's regular rate of pay for all time worked cleaning guest rooms during that day.

PART 3 IMPROVING ACCESS TO MEDICAL CARE FOR LOW-INCOME HOTEL EMPLOYEES

14.25.110 Intent

It is the intent of Part 3 to improve access to affordable family medical care for hotel employees. In Washington's economy, hospitality industry employees are the least likely to have health insurance and their contributions are second to lowest. The average monthly cost to a hotel employer for a family medical coverage through an employer-offered plan exceeds \$500 per month, forcing nearly half of eligible employees to decline such plans. Access to affordable medical care is critical for hotel employees to care for themselves and their families. Additional compensation reflecting hotel employees' a dedicated family medical costs is necessary to improve access to medical care for low-income hotel employees.

14.25.120 Large hotel employers must provide additional compensation to low-income hotel employees. A large hotel employer shall pay, by no later than the 15th day of each calendar month, cash of the low-wage employees who work full time at a large hotel additional wages or salary in an amount equal to the greater of \$200, adjusted annually for inflation, or the difference between (1) the monthly premium for the lowest-cost, gold-tiered policy available on the Washington Health Benefit Exchange and (2) 75 percent of the amount by which the employer's compensation for the services of a temporary service or staffing agency or similar entity, employer or exceeds control over the wages, hours, or working conditions of any employee and who owns, controls, and/or operates a hotel in Seattle; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel employer's furnishing of the employer's provision of lodging and other related services for the public.

B. A large hotel employer shall not be required to pay the additional wages or salary required by this Section 14.25.120 with respect to an employee for whom the hotel employer provides health and hospitalization coverage at least equal to a gold-level policy on the Washington Health Benefit Exchange as a premium or contribution cost to the employee of no more than five percent of the employee's gross taxable earnings paid to the employer by the hotel employer or its contractors or subcontractors.

C. If a household includes multiple employees covered by this Section 14.25.120, the total of all additional wages or salary payments made pursuant to this Section 14.25.120 to such employees by one or more hotel employers shall not exceed the total cost for coverage of the household under the least-expensive gold policy offered on the Washington Health Benefit Exchange, if one or more employees in the household are employed by more than one hotel employer, the hotel employers may coordinate their payments so that their combined payments do not exceed the foregoing maximum. In the absence of an agreement among hotel employers to coordinate their payments, the amount of additional wages payable by each hotel employer shall be the amount due to each employee under subsection 14.25.120.A.

D. The inflation adjustment required under subsection 14.25.120.A shall be calculated using the year-over-year increase in cost of the lowest cost gold level policy available on the Washington Health Benefit Exchange.

PART 4 PREVENTING DISRUPTIONS IN THE HOTEL INDUSTRY

14.25.130 Intent

This Part 4 is intended to reduce disruptions to the Seattle economy that could result from the increasing number of property sales and changes in ownership in the hotel industry and also to protect low-income workers. Even long-term and exempt employees may find themselves terminated solely because a multinational corporation has decided to sell the hotel at which they work.

14.25.140 Worker retention. A. When a hotel undergoes a change in control, the outgoing hotel employer shall, within 15 days after the execution of a transfer document, provide to the incoming hotel employer the name, address, date of hire, and employment occupation classification of each retention hotel worker.

B. The incoming hotel employer shall maintain a confidential listing list of retention hotel workers identified by the outgoing hotel employer, as set forth in subsection 14.25.140.A, and shall be required to file them with the City for a period of six months beginning upon the execution of the transfer document and continuing for six months after the hotel is open to the public under the incoming hotel employer.

C. If the incoming hotel employer extends an offer of employment to a retention hotel worker, the offer shall be in writing and remain open for at least ten business days. The incoming hotel employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each retention hotel worker.

D. An incoming hotel employer shall retain each retention hotel worker hired pursuant to this Section 14.25.140 for no fewer than 90 days following the retention hotel worker's employment commencement date. During this 90-day transition employment period, retention hotel workers shall be employed under the terms and conditions established by the incoming hotel employer, or as required by law.

E. If, within the 90-day transition employment period established in subsection 14.25.140.D, the incoming hotel employer determines that it requires fewer hotel workers than were required by the outgoing hotel employer, the incoming hotel employer shall retain retention hotel workers by its written each job classification to the extent that comparable job classifications exist.

F. During the employment period, the incoming hotel employer shall not discharge without just cause a retention hotel worker retained pursuant to this Section 14.25.140.

G. At the end of the 90-day transition employment period, the incoming hotel employer shall provide a written performance evaluation for each hotel worker retained pursuant to this Section 14.25.140. If the retention hotel worker's performance during the 90-day transition employment period is satisfactory, the incoming hotel employer shall continue offering the retention hotel worker continued employment under the terms and conditions established by the incoming hotel employer, or as required by law. The incoming hotel employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

H. The outgoing hotel employer shall post written notice of the change in control at the location of the affected hotel within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place at the hotel and be readily viewed by retention hotel workers, other employees, and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing hotel employer and its

contact information, the name of the incoming hotel employer and its contact information, and the effective date of the change in control. Notice shall remain posted during any closure of the hotel and for 24 months after the hotel is open to the public under the incoming hotel employer.

PART 5 ENFORCING COMPLIANCE WITH THE LAW

14.25.150 Enforcement

A. Exercise of rights protected, retaliation prohibited. 1. It shall be a violation for a hotel 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 14.25.

2. No person may discharge, reduce any part of the compensation of, or otherwise discriminate against an employee, in response to the enactment of this Chapter 14.25, or in response to the employee asserting rights under this Chapter 14.25. Such adverse actions are deemed to harm the public and the employees irreparably, and hence preliminary equitable relief and reinstatement shall be available to the affected employees in addition to all other relief.

3. It shall be a violation for a hotel employer to take any adverse action against any employee because the employee has exercised in good faith the rights protected under this Chapter 14.25. Such rights include but are not limited to the right to assert any rights guaranteed pursuant to this Chapter 14.25; the right to make inquiries about the rights protected under this Chapter 14.25; the right to inform others about an employer's alleged violation of this Chapter 14.25; the right to cooperate with the City in any investigations of alleged violations of this Chapter 14.25; the right to copy any policy, practice, or act that is unlawful under this Chapter 14.25; the right to file an oral or written complaint with the City or to bring a civil action for an alleged violation of this Chapter 14.25; the right to testify in a proceeding under or related to this Chapter 14.25; the right to refuse to participate in any activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25.

4. It shall be a violation for a hotel employer to (a) communicate to an employee exercising rights under this Chapter 14.25, directly or indirectly, explicitly or implicitly, its willingness or intent to inform a government employer that the employee is not lawfully in the United States; or (b) report or threaten to report suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.25.

5. A hotel employer who takes an adverse action against an employee because the employee exercises a right under this Chapter 14.25 shall be liable for the employee's 90 days of the employee's exercise of rights protected in this Chapter 14.25. The hotel employer may rebut the presumption with clear and convincing evidence that the action was taken for a permissible purpose and that the employee's exercise of rights protected in this Chapter 14.25 was not a motivating factor in the adverse action.

6. When the presumption in subsection 14.25.150.A.5 does not apply, proof of retaliation under this Chapter 14.25 shall be sufficient upon a showing that a hotel employer has taken an adverse action against an employee and the employer's exercise of rights protected in this Chapter 14.25 was a motivating factor in the adverse action, unless the hotel employer can prove that the action would have been taken in the absence of such protected activity.

7. The provisions under subsections 14.25.150.A.2 and 14.25.150.A.3 apply to any employee who mistakenly but in good faith alleges violations of this Chapter 14.25.

B. Notice, posting, and records. 1. Each hotel employer shall give written notification to each current employee and to each new employee at time of hire of the employee's rights under this Chapter 14.25. The notification shall be in each language spoken by ten or more employees.

2. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the following information: (a) for each workweek of employment, the employee's regular hourly rate of pay; (b) for each month of full-time employment at a large hotel, the amount of additional wages or salary paid in compliance with the cost of medical coverage for the cost of medical coverage for low-income hotel employees, as required by section 14.25.100; and (c) for each day of employment as a housekeeping employee at a large hotel, the total square feet of guest room floor space cleaned, the number of strenuous room cleanings performed, the number of hours worked, and the employee's gross pay for that day. The hotel employer must, upon request, make all such employee and former employee records available in full to any requesting employee and to the Office of Labor Standards within the time frame specified in subsection 14.25.150.A.3.

C. Private enforcement action. 1. Any person claiming injury from a violation of this Chapter 14.25 shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this Chapter 14.25, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this Chapter 14.25, including but not limited to lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid on the established regular pay day when those wages were due, and to collect civil penalties as described in subsection 14.25.150.E.

2. A person who prevails in any action to enforce this Chapter 14.25 shall be awarded costs, reasonable attorney's fees, and expenses.

3. An order issued by the court may include a requirement for a compliance report to be submitted to the court and to the City by the hotel employer.

D. Powers and duties of the Office of Civil Rights. 1. The Office of Civil Rights may investigate charges alleging violations of this Chapter 14.25 and shall have such powers and duties in the performance of these functions as are necessary and proper in the performance and proper in the performance of the same and provided for by law.

2. The Division Director of the Office of Labor Standards within the Office of Civil Rights, or the Division Director's designee, is authorized and directed to enforce the provisions of this Chapter 14.25, including rules that protect the identity and privacy rights of employees who have made complaints under this Chapter 14.25.

E. Penalties. 1. Each workweek during which the hotel employer is in violation of this Chapter 14.25 shall be deemed a separate violation for which the hotel employer is liable for the amount of any damages which may be recovered by or awarded to any employee, of at least \$100 per day per employee, and not more than \$1,000 per day per employee, in an amount to be determined by the court.

2. Civil penalties shall be distributed as follows: 50 percent to the Office of Labor Standards; 25 percent to the aggrieved employee, distributed according to each employee's share of injury by the violations; and 25 percent to the person bringing the case. Penalties paid to the Office of Labor Standards shall be used for the enforcement of labor law and the education of employers and employees about their rights and responsibilities under the laws governing labor standards, to be continuously appropriated to supplement and not supplant existing funding for those purposes.

PART 6 DEFINITIONS

14.25.160 Definitions

For the purposes of this Chapter 14.25:

"Assignment" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that continues in operation as a hotel, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing hotel employer or any person who controls the outgoing hotel employer.

"Checkout room" means a guest room assigned to be cleaned by an employee due to the departure of the guest assigned to that room.

"Compensation" means wages, salary, sick pay, vacation pay, holiday pay, bonuses, commissions, allowances, and in-kind compensation for work performed.

"Employer" and "hotel employer" means any non-managerial, non-supervisory individual employed by a hotel employer who:

1. In any particular workweek performs at least two hours of work within the geographic boundaries of the City of Seattle for a hotel employer; and

2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the City of Seattle and/or State of Washington minimum wage laws.

"Employee" and "hotel employee" includes any individual (1) whose place of employment is at one or more hotels and (2) who is employed directly by the hotel employer or a person who has contracted with the hotel employer to provide services at the hotel. Supervisory and confidential employees as defined under the National Labor Relations Act are not considered employees under this Chapter 14.25.

"Employment commencement date" means the date on which a hotel employee retained by the incoming hotel employer pursuant to this Chapter 14.25 commences work for the incoming hotel employer in exchange for benefits and compensation under the terms and conditions established by the incoming hotel employer or as required by law.

"Federal poverty line" means the poverty line for the size of the employee's household for the Seattle area as published in the Annual Update by the Department of Health and Human Services of the Poverty Guidelines for the 48 contiguous States and the District of Columbia in the Federal Register.

"Hotel" means a hotel or motel, as defined in Section 23.88A.020, containing 20 or more guest rooms or suites of rooms. "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

"Hotel employer" means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employer or exercises control over the wages, hours, or working conditions of any employee and who owns, controls, and/or operates a hotel in Seattle; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel employer's furnishing of the employer's provision of lodging and other related services for the public.

"Incoming hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control after the change in control.

"Large hotel" means a hotel containing 100 or more guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee, regardless of how many of those rooms or suites are occupied or in commercial use on any given time.

"Low-wage employee" means an employee whose total compensation from the employer is 400 percent or less of the federal poverty line for the size of the employee's household.

"Outgoing hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control prior to the change in control.

"Panic button" means an emergency contact device carried by an employee by which the employee may summon immediate on-scene assistance from another employee, security guard, or representative of the hotel employer.

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

"Policy" means an insurance policy available on the Washington Health Benefit Exchange that would provide coverage to the employee and, if the employee has any spouse and dependent children, to the employee's spouse and dependent children in addition to the employee.

"Strenuous room cleaning" means the cleaning of (1) a checkout room or (2) a stayover room that includes a cot, rollout bed, pet bed or crib.

"Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect the change in control, (1) who is employed directly by the outgoing hotel employer, or a person who has contracted with the outgoing hotel employer to provide services at the hotel subject to a change in control, and (3) who has worked for the outgoing hotel employer for at least one month prior to the execution of the transfer document.

"Wages or salary" means the gross amount of taxable cash earnings paid to an employee by an employer or the employer's contractors or subcontractors.

PART 7 MISCELLANEOUS

14.25.170 Waiver

A. The provisions of this Chapter 14.25 may not be waived by agreement between an individual employee and an employer or contractors.

B. Any waiver by a party to a collective bargaining relationship involving a hotel employer of any provisions of Sections 14.25.020 through 14.25.060 and the applicable enforcement mechanisms under Section 14.25.150 shall be deemed contrary to public policy and shall be void and unenforceable.

C. Except as provided in Section 14.25.170.B, all of the provisions of this Chapter 14.25, or any part thereof, may be waived in a bona fide written collective bargaining agreement having provisions of this Chapter 14.25, if such a waiver is set forth 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 violation of this Chapter 14.25.

14.25.180 Severability and exceptions. A. The provisions of this Chapter 14.25 are declared to be separate and severable. If any provision of this Chapter 14.25, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter 14.25 that can be given effect without the invalid provision or application, and to this end, the provisions or applications of this Chapter 14.25 are severable.

B. The requirements of this Chapter 14.25 shall not apply where and to the extent that state or federal law or regulations preclude their applicability.

14.25.190 Short title. This Chapter 14.25 is titled the Seattle Hotel Employees Health and Safety Initiative.

AN ACT establishing minimum health and safety standards for hotel employees in the City of Seattle.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF SEATTLE:

Section 1. A new Chapter 14.25 is added to the Seattle Municipal Code as follows:

14.25 HOTEL EMPLOYEES HEALTH AND SAFETY

14.25.010 Findings

The people hereby adopt basic safeguards to protect hotel employees from assault and injury on the job, to improve access to affordable healthcare, and to provide a minimum standard of job security for hotel employees. This measure also includes strong enforcement mechanisms to ensure that hotel owners and operators comply with the law. Providing these protections to hotel employees will make Seattle's economy fairer and more resilient.

Hotel employees are vital contributors to our community. The hospitality industry is a profitable and important component of our economy that receives substantial taxpayer support, including through the \$1.5 billion expansion of the Washington State Convention Center.

However, the hospitality industry has not adequately provided for the safety and security of hotel employees. Due to the unique nature of hotel work, hotel employees are subjected to a higher risk of harassment and violence on the job. Unregulated workloads result in injury rates for hotel housekeepers that are higher than those of coalminers. At the same time, hospitality employees have the lowest rate of access to employer-offered health insurance of any industry in the State of Washington and face unaffordable monthly premiums for family healthcare. Frequent property sales, changes in ownership, mergers and acquisitions in the hospitality industry mean that hotel employees face employment disruptions that are wholly beyond their control. As a vast majority of Seattle hotel employees are women, immigrants, and people of color, these hazards and instabilities within the hospitality industry exacerbate existing structural inequities experienced by these groups. It is appropriate and necessary to protect employees in the hotel industry those who clean the rooms, change the sheets, and dice the vegetables from assault and injury, unmanageable medical costs, and unnecessary job loss.

PART 1

PROTECTING HOTEL EMPLOYEES FROM VIOLENT ASSAULT AND SEXUAL HARASSMENT

14.25.020 Intent

It is the intent of Part 1 of this measure to protect hotel employees from violent assault, including sexual assault, and sexual harassment and to enable employees to speak out when they experience harassment or assault on the job. Hotel employees are often asked to work alone in

hotel rooms, which sometimes may be occupied, placing them at risk of violent assault, including sexual assault, and sexual harassment.

14.25.030 Providing panic buttons to hotel employees providing in-room services

A hotel employer shall provide a panic button to each hotel employee assigned to work in a guest room without other employees present, at no cost to the employee. An employee may use the panic button if the employee reasonably believes there is an ongoing crime, harassment, or other emergency in the employee's presence. The hotel employee may cease work and leave the immediate area of perceived danger to await the arrival of assistance, and no adverse employment action may be taken against the employee for such action.

14.25.040 Protecting hotel employees from violent or harassing hotel guests

A. A hotel employer must record the accusations it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment towards an employee. The hotel employer must determine and record the name of the guest; if the name of the guest cannot be determined, the hotel employer must determine and record as much identifying information about the guest as is reasonably possible. The hotel employer shall compile and maintain a list of all guests so accused. The employer shall retain a guest on the list for at least five years from the date of the most recent accusation against the guest, during which time the employer shall retain all written documents relating to such accusations.

B. If an accusation against a guest under subsection 14.25.040.A involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer shall decline to allow the guest to return to the hotel for at least three years after the date of the incident. No employee may be required to provide such statement.

C. The hotel employer must notify any hotel employee assigned to work in guest rooms without other employees present, prior to starting their scheduled work, of any guest on the list established by subsection 14.25.040.A who is staying at the hotel, identify the room assigned to the guest, and warn the employees to exercise caution when entering that room during the time the guest is staying in the hotel.

14.25.050 Deterring assaults by notifying guests of employee protections

Each hotel shall place a sign on the back of each guest room door, written in a font size of no less than 18 points, that includes the heading The Law Protects Hotel Housekeepers and Other Employees From Violent Assault and Sexual Harassment, a citation to this Chapter 14.25, and notice of the fact that the hotel is providing panic buttons to its housekeepers, room servers, and other employees assigned to work in guest rooms without other employees present, in compliance with this Chapter 14.25.

14.25.060 Protecting employees who report assault or sexual harassment

An employee who brings to the attention of a hotel employer the occurrence of an act of violence, including assault and sexual assault, or sexual harassment by a guest shall be afforded the following rights:

A. Upon request, the employee shall be reassigned to a different floor, or, if none is available for the employees job classification, a different work area away from the guest for the entire duration of the guests stay at the hotel;

B. The hotel employer shall immediately allow the employee sufficient paid time to contact the police and provide a police statement and to consult with a counselor or advisor of the employees choosing; and

C. The hotel employer, with the consent of the employee, shall report an incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction and shall cooperate with any investigation into the incident undertaken by the agency and any attorney for the complaining employee.

PART 2

PROTECTING HOTEL EMPLOYEES FROM INJURY

14.25.070 Intent

It is the intent of this Part 2 to protect hotel employees from on-the-job injury. Hotel employees suffer an unacceptably high rate of on-the-job injuries from heavy lifting, repetitive tasks, and chemical exposure, and are 40 percent more likely to be injured on the job than all other service sector workers. The provisions of this Part 2 will help to protect hotel employees from such injuries.

14.25.080 Hotel employers must adopt reasonable practices to protect the safety of hotel employees

Hotel employers must provide and use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe.

14.25.090 Hotel employers must protect their employees from chemical hazards

Hotel employers must:

A. Control chemical agents in a manner that they will not present a hazard to employees;

B. Protect employees from the hazard of contact with, or exposure to, chemical agents; and

C. Provide employees with effective information on hazardous chemicals in their work area at the time of their initial job assignment. Information must be provided whenever a new physical or health hazard related to chemical exposure is introduced into work areas.

14.25.100 Hotel employers must protect hotel housekeepers from injuries

A. Significant injuries to hotel housekeepers result from the repetitive and strenuous tasks that must be performed in each guest room, including lifting requirements that can substantially exceed federal occupational safety standards. Hotel housekeepers face the highest injury rate of all hotel occupations. Risk of injury is increased when hotel housekeepers must clean more than 5,000 square feet of guest rooms in an eight-hour workday, and further increases when housekeepers are required to perform more than ten strenuous guest room cleanings during the day or to clean guest rooms at an unsafe speed. Workplace interventions have been found to significantly reduce injury rates for hotel housekeepers.

B. An employee providing housekeeping services at a large hotel shall not be required to clean guest rooms totaling more than 5,000 square feet of floor space in an eight-hour workday. When an employee performs ten or more strenuous room cleanings in an eight-hour workday, the maximum floor space shall be reduced by 500 square feet for the tenth strenuous room cleaning and for each such strenuous room cleaning thereafter.

C. For an employee cleaning guest rooms for fewer than eight hours per day, the foregoing maximums and reductions shall be prorated according to the actual number of hours worked cleaning guest rooms.

D. If an employee performs cleaning in excess of the square footage allowed by this Section 14.25.100 in a day, the hotel employer shall pay such hotel employee at least time-and-a-half the employees regular rate of pay for all time worked cleaning guest rooms during that day.

PART 3

IMPROVING ACCESS TO MEDICAL CARE FOR LOW INCOME HOTEL EMPLOYEES

14.25.110 Intent

It is the intent of Part 3 to improve access to affordable family medical care for hotel employees. In Washingtons economy, hospitality industry employers are the least likely to offer health insurance to employees and their contributions are second to lowest. The average monthly cost to a hotel employee for family medical coverage through an employer-offered plan exceeds \$500 per month, forcing nearly half of eligible employees to decline such plans. Access to affordable medical care is critical for hotel employees to care for themselves and their families. Additional compensation reflecting hotel employees anticipated family medical costs is necessary to improve access to medical care for low income hotel employees.

14.25.120 Large hotel employers must provide additional compensation reflective of the cost of medical coverage to low-income hotel employees

A. A large hotel employer shall pay, by no later than the 15th day of each calendar month, each of its low-wage employees who work full time at a large hotel additional wages or salary in an amount equal to the greater of \$200, adjusted annually for inflation, or the difference between (1)

the monthly premium for the lowest-cost, gold-level policy available on the Washington Health Benefit Exchange and (2) 7.5 percent of the amount by which the employee's compensation for the previous calendar month, not including the additional wage or salary required by this Section 14.25.120, exceeds 100 percent of the federal poverty line. The additional wages or salary required under this Section 14.25.120 are in addition to and will not be considered as wages paid for purposes of determining compliance with the hourly minimum wage and hourly minimum compensation requirements set forth in Sections 14.19.030 through 14.19.050.

B. A large hotel employer shall not be required to pay the additional wages or salary required by this Section 14.25.120 with respect to an employee for whom the hotel employer provides health and hospitalization coverage at least equal to a gold-level policy on the Washington Health Benefit Exchange at a premium or contribution cost to the employee of no more than five percent of the employee's gross taxable earnings paid to the employee by the hotel employer or its contractors or subcontractors.

C. If a household includes multiple employees covered by this Section 14.25.120, the total of all additional wage or salary payments made pursuant to this Section 14.25.120 to such employees by one or more hotel employers shall not exceed the total cost for coverage of the household under the least-expensive gold policy offered on the Washington Health Benefit Exchange. If one or more employees in the household are employed by more than one hotel employer, the hotel employers may coordinate their payments so that their combined payments do not exceed the foregoing maximum. In the absence of an agreement among hotel employers to so coordinate their payments, the amount of additional wages payable by each hotel employer shall be the amount due to each employee under subsection 14.25.120.A.

D. The inflation adjustment required under subsection 14.25.120.A shall be calculated using the year-over-year increase in cost of the lowest cost gold level policy available on the Washington Health Benefit Exchange.

PART 4

PREVENTING DISRUPTIONS IN THE HOTEL INDUSTRY

14.25.130 Intent

This Part 4 is intended to reduce disruptions to the Seattle economy that could result from the increasing number of property sales and changes in ownership in the hotel industry and also to protect low-income workers. Even long-term and exemplary employees may find themselves terminated solely because a multinational corporation has decided to sell the hotel at which they work.

14.25.140 Worker retention

A. When a hotel undergoes a change in control, the outgoing hotel employer shall, within 15 days after the execution of a transfer document, provide to the incoming hotel employer the

name, address, date of hire, and employment occupation classification of each retention hotel worker.

B. The incoming hotel employer shall maintain a preferential hiring list of retention hotel workers identified by the outgoing hotel employer, as set forth in subsection 14.25.140.A, and shall be required to hire from that list for a period beginning upon the execution of the transfer document and continuing for six months after the hotel is open to the public under the incoming hotel employer.

C. If the incoming hotel employer extends an offer of employment to a retention hotel worker, the offer shall be in writing and remain open for at least ten business days. The incoming hotel employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each retention hotel worker.

D. An incoming hotel employer shall retain each retention hotel worker hired pursuant to this Section 14.25.140 for no fewer than 90 days following the retention hotel worker's employment commencement date. During this 90-day transition employment period, retention hotel workers shall be employed under the terms and conditions established by the incoming hotel employer, or as required by law.

E. If, within the 90-day transition employment period established in subsection 14.25.140.D, the incoming hotel employer determines that it requires fewer hotel employees than were required by the outgoing hotel employer, the incoming hotel employer shall retain retention hotel workers by seniority within each job classification to the extent that comparable job classifications exist.

F. During the 90-day transition employment period, the incoming hotel employer shall not discharge without just cause a retention hotel worker retained pursuant to this Section 14.25.140.

G. At the end of the 90-day transition employment period, the incoming hotel employer shall provide a written performance evaluation for each hotel worker retained pursuant to this Section 14.25.140. If the retention hotel worker's performance during the 90-day transition employment period is satisfactory, the incoming hotel employer shall consider offering the retention hotel worker continued employment under the terms and conditions established by the incoming hotel employer, or as required by law. The incoming hotel employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

H. The outgoing hotel employer shall post written notice of the change in control at the location of the affected hotel within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place at the hotel so as to be readily viewed by retention hotel workers, other employees, and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing hotel employer and its contact information, the name of the incoming hotel employer and its contact information, and the effective date of the change in control. Notice shall remain posted during any closure of the hotel and for six months after the hotel is open to the public under the incoming hotel employer.

PART 5

ENFORCING COMPLIANCE WITH THE LAW

14.25.150 Enforcement

A. Exercise of rights protected; retaliation prohibited

1. It shall be a violation for a hotel 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 14.25.

2. No person may discharge, reduce any part of the compensation of, or otherwise discriminate against an employee, in response to the enactment of this Chapter 14.25, or in response to the employee asserting rights under this Chapter 14.25. Such adverse actions are deemed to harm the public and the employees irreparably, and hence preliminary equitable relief and reinstatement shall be available to the affected employees in addition to all other relief.

3. It shall be a violation for a hotel employer to take any adverse action against any employee because the employee has exercised in good faith the rights protected under this Chapter 14.25. Such rights include but are not limited to the right to assert any rights guaranteed pursuant to this Chapter 14.25; the right to make inquiries about the rights protected under this Chapter 14.25; the right to inform others about an employer's alleged violation of this Chapter 14.25; the right to cooperate with the City in any investigations of alleged violations of this Chapter 14.25; the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25; the right to file an oral or written complaint with the City or to bring a civil action for an alleged violation of this Chapter 14.25; the right to testify in a proceeding under or related to this Chapter 14.25; the right to refuse to participate in any activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25.

4. It shall be a violation for a hotel employer to (a) communicate to an employee exercising rights under this Chapter 14.25, directly or indirectly, explicitly or implicitly, its willingness or intent to inform a government employee that the employee is not lawfully in the United States; or (b) report or threaten to report suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.25.

5. There shall be a rebuttable presumption of retaliation if a hotel employer takes an adverse action against an employee within 90 days of the employees exercise of rights protected in this Chapter 14.25. The hotel employer may rebut the presumption with clear and convincing evidence that the action was taken for a permissible purpose and that the employees exercise of rights protected in this Chapter 14.25 was not a motivating factor in the adverse action.

6. When the presumption in subsection 14.25.150.A.5 does not apply, proof of retaliation under this Chapter 14.25 shall be sufficient upon a showing that a hotel employer has taken an adverse action against an employee and the employees exercise of rights protected in this Chapter 14.25

was a motivating factor in the adverse action, unless the hotel employer can prove that the action would have been taken in the absence of such protected activity.

7. The protections under subsections 14.25.150.A.2 and 14.25.150.A.3 apply to any employee who mistakenly but in good faith alleges violations of this Chapter 14.25.

B. Notice, posting, and records

1. Each hotel employer shall give written notification to each current employee and to each new employee at time of hire of the employees rights under this Chapter 14.25. The notification shall be in each language spoken by ten or more employees.

2. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the following information: (a) for each workweek of employment, the employees regular hourly rate of pay; (b) for each month of full-time employment at a large hotel, the amount of additional wages or salary paid as additional compensation reflective of the cost of medical coverage for low income hotel employees, as required by section 14.25.120; and (c) for each day of employment as a housekeeping employee at a large hotel, the total square feet of guest room floor space cleaned, the number of strenuous room cleanings performed, the number of hours worked, and the employees gross pay for that day. The hotel employer must, upon request, make all such employee and former employee records available in full to any requesting employee and to the Office of Labor Standards for inspection and copying.

C. Private enforcement action

1. Any person claiming injury from a violation of this Chapter 14.25 shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this Chapter 14.25, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this Chapter 14.25, including but not limited to lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid on the established regular pay day when those wages were due, and to collect civil penalties as described in subsection 14.25.150.E.

2. A person who prevails in any action to enforce this Chapter 14.25 shall be awarded costs, reasonable attorneys fees, and expenses.

3. An order issued by the court may include a requirement for a compliance report to be submitted to the court and to the City by the hotel employer.

D. Powers and duties of the Office of Civil Rights

1. The Office of Civil Rights may investigate charges alleging violations of this Chapter 14.25 and shall have such powers and duties in the performance of these functions as are necessary and proper in the performance of the same and provided for by law.

2. The Division Director of the Office of Labor Standards within the Office for Civil Rights, or the Division Director's designee, is authorized and directed to promulgate rules consistent with this Chapter 14.25, including rules that protect the identity and privacy rights of employees who have made complaints under this Chapter 14.25.

E. Penalties

1. Each workday during which the hotel employer is in violation of this Chapter 14.25 shall be deemed a separate violation for which the hotel employer shall be liable for a penalty, exclusive of any damages which may be recovered by or awarded to any employee, of at least \$100 per day per employee, and not more than \$1,000 per day per employee, in an amount to be determined by the court.

2. Civil penalties shall be distributed as follows: 50 percent to the Office of Labor Standards; 25 percent to the aggrieved employees, distributed according to each employees share of injury by the violations; and 25 percent to the person bringing the case. Penalties paid to the Office of Labor Standards shall be used for the enforcement of labor laws and the education of employers and employees about their rights and responsibilities under the laws governing labor standards, to be continuously appropriated to supplement and not supplant existing funding for those purposes.

PART 6

DEFINITIONS

14.25.160 Definitions

For the purposes of this Chapter 14.25:

Change in control means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that continues in operation as a hotel, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing hotel employer or any person who controls the outgoing hotel employer.

Checkout room means a guest room assigned to be cleaned by an employee due to the departure of the guest assigned to that room.

Compensation means wages, salary, sick pay, vacation pay, holiday pay, bonuses, commissions, allowances, and in-kind compensation for work performed.

Employee and hotel employee means any non-managerial, non-supervisory individual employed by a hotel employer who:

1. In any particular workweek performs at least two hours of work within the geographic boundaries of the City of Seattle for a hotel employer; and

2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the City of Seattle and/or State of Washington minimum wage laws.

Employee and hotel employee include any individual (1) whose place of employment is at one or more hotels and (2) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at the hotel. Supervisory and confidential employees as defined under the National Labor Relations Act are not considered employees under this Chapter 14.25.

Employment commencement date means the date on which a hotel employee retained by the incoming hotel employer pursuant to this Chapter 14.25 commences work for the incoming hotel employer in exchange for benefits and compensation under the terms and conditions established by the incoming hotel employer or as required by law.

Federal poverty line means the poverty line for the size of the employees household for the Seattle area as published in the Annual Update by the Department of Health and Human Services of the Poverty Guidelines for the 48 Contiguous States and the District of Columbia in the Federal Register.

Full time means at least 80 hours in a calendar month.

Hotel means a hotel or motel, as defined in Section 23.84A.024, containing 60 or more guest rooms or suites of rooms. "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

Hotel employer means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who owns, controls, and/or operates a hotel in Seattle; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel employer in furtherance of the hotels provision of lodging and other related services for the public.

Incoming hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control after the change in control.

Large hotel means a hotel containing 100 or more guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee, regardless of how many of those rooms or suites are occupied or in commercial use at any given time.

Low-wage employee means an employee whose total compensation from the employer is 400 percent or less of the federal poverty line for the size of the employees household.

Outgoing hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control prior to the change in control.

Panic button means an emergency contact device carried by an employee by which the employee may summon immediate on-scene assistance from another employee, security guard, or representative of the hotel employer.

Person means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

Policy means an insurance policy available on the Washington Health Benefit Exchange that would provide coverage to the employee and, if the employee has any spouse and dependent children, to the employees spouse and dependent children in addition to the employee.

Stayover room means a guest room assigned to be cleaned by an employee where the guests stay has not yet ended.

Strenuous room cleaning means the cleaning of (1) a checkout room or (2) a stayover room that includes a cot, rollout bed, pet bed or crib.

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

Retention hotel worker means any employee (1) whose primary place of employment is at a hotel subject to a change in control, (2) who is employed directly by the outgoing hotel employer, or by a person who has contracted with the outgoing hotel employer to provide services at the hotel subject to a change in control, and (3) who has worked for the outgoing hotel employer for at least one month prior to the execution of the transfer document.

Wages or salary means the gross amount of taxable cash earnings paid to an employee by an employer or the employers contractors or subcontractors.

PART 7

MISCELLANEOUS

14.25.170 Waiver

A. The provisions of this Chapter 14.25 may not be waived by agreement between an individual employee and a hotel employer.

B. Any waiver by a party to a collective bargaining relationship involving a hotel employer of any provisions of Sections 14.25.020 through 14.25.060 and the applicable enforcement mechanisms under Section 14.25.150 shall be deemed contrary to public policy and shall be void and unenforceable.

C. Except as provided in Section 14.25.170.B, all of the provisions of this Chapter 14.25, or any part hereof, may be waived in a bona fide written collective bargaining agreement waiving

provisions of this Chapter 14.25, if such a waiver is set forth 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 14.25.

14.25.180 Severability and exceptions

A. The provisions of this Chapter 14.25 are declared to be separate and severable. If any provision of this Chapter 14.25, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter 14.25 that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter 14.25 are severable.

B. The requirements of this Chapter 14.25 shall not apply where and to the extent that state or federal law or regulations preclude their applicability.

14.25.190 Short title

This Chapter 14.25 is titled the Seattle Hotel Employees Health and Safety Initiative.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 21, 2017 4:37 PM
To: 'Persun, Heather'
Subject: RE: American Hotel & Lodging Assoc., et al. v. City of Seattle, et al. - No. 94727-9

Received 9-21-17.

Supreme Court Clerk's Office

From: Persun, Heather [mailto:HeatherPersun@dwt.com]
Sent: Thursday, September 21, 2017 4:22 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: American Hotel & Lodging Assoc., et al. v. City of Seattle, et al. - No. 94727-9

Good afternoon ~

American Hotel & Lodging Assoc., et al. v. City of Seattle, et al. - No. 94727-9

Attached for filing in the above matter is the Opening Brief of American Hotel & Lodging Association, Seattle Hotel Association and Washington Hospitality Association.

Attempted to e-file, but the system was not working. Will attempt to e-file again, but wanted to make sure this was in before the deadline.

Please do not hesitate to contact our office with any questions. Thank you.

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