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No. 96781-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,
Petitioner,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMAN,
Petitioner,

v.

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

SUPPLEMENTAL BRIEF OF PETITIONER CITY OF SEATTLE

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I. INTRODUCTION

Ambitious in scope but singular in focus, Seattle Initiative 124 (the “Initiative”) takes on the full panoply of factors impacting worker well-being within the hotel industry. After the Initiative received overwhelming support from Seattle voters, the Court of Appeals set it aside on single-subject grounds, applying a wholly inapplicable statute and departing from settled law. In concluding that the Initiative contained at least four distinct subjects, the lower court advanced a narrow view of the single-subject rule that, if affirmed, will have far-reaching consequences for future lawmaking. Most notably, by limiting the permissible scope of legislation, it will cause the people and their elected representatives to forego holistic solutions to multi-dimensional problems in favor of piecemeal fixes and siloed decision-making. This Court should reverse the Court of Appeals’ decision and restore the prerogative of legislators to determine the breadth of legislation necessary for meaningful change.

II. ISSUES PRESENTED

- A. Did the Court of Appeals err in applying the single-subject requirement in a manner that conflicts with this Court’s prior decisions and precludes comprehensive legislation?
- B. Did the Court of Appeals err in holding that RCW 35A.12.130, a provision of the Optional Municipal Code, applies to a first-class

charter city that has never opted to be bound by the Optional Municipal Code?

III. STATEMENT OF THE CASE

This appeal arose from a post-election challenge to a local initiative designed to improve worker well-being within the hotel industry.

A. Seattle voters overwhelmingly approve the Initiative.

On April 6, 2017, UNITE HERE! Local 8 (“Unite Here”) filed a copy of the Initiative petition, which was designated I-124. CP 70. After the City Attorney’s Office prepared the ballot title, Unite Here and the Washington Lodging Association sued to challenge the title. CP 71. The ballot title the Superior Court ultimately approved states in relevant part:

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.

CP 75. On November 8, 2016, Seattle voters overwhelmingly adopted the Initiative, with 76.59% voting in favor of its passage. CP 337.

B. Overview of the Initiative.

The Initiative adds a new chapter to the Seattle Municipal Code, Chapter 14.25 SMC, titled Hotel Employees Health and Safety (Appendix A). Each subpart of the Initiative addresses a different facet of worker well-being within the hotel industry.

Part 1 improves worker well-being by protecting hotel workers from assault and harassment on the job. SMC 14.25.020-.060.

Part 2 improves worker well-being by protecting hotel workers from other on-the-job injuries, including those associated with hazardous chemicals and strenuous workloads. *See* SMC 14.25.070-.100.

Part 3 promotes worker well-being by “improv[ing] access to affordable family medical care.” SMC 14.25.110. *See generally* SMC 14.25.120.

Part 4 improves the well-being of hotel workers by reducing economic disruption caused by property sales or ownership changes in the hotel industry. *See* SMC 14.25.130-.140.

Part 5 pertains to enforcement of the Initiative’s substantive requirements. *See* SMC 14.25.150. Part 6 provides definitions. *See* SMC 14.25.160. Part 7 allows any provisions of Chapter 14.25, except for the provisions on assault and harassment, to be waived via a collective

bargaining agreement. SMC 14.25.170. It contains a severability clause and a short title. *See* SMC 14.25.180 & .190.

C. Procedural history.

Shortly after the Initiative went into effect, several hotel associations (the “Association”) filed suit, bringing seven different claims. CP 1-9. The Initiative proponents intervened shortly thereafter. All parties moved for summary judgment. On June 9, 2017, Judge John P. Erlick issued a 38-page opinion rejecting each of the Association’s claims. CP 333-70.

On December 24, 2018, the Court of Appeals reversed the Superior Court’s ruling, holding that the Initiative contained at least four distinct subjects and therefore violated the single-subject requirements of the Seattle City Charter and RCW 35A.12.130. *Am. Hotel & Lodging Ass’n v. City of Seattle*, 6 Wn. App. 2d 928, 949, 432 P.3d 434 (2018). The City and Unite Here sought discretionary review, and this Court granted both petitions.

IV. ARGUMENT

A. The Initiative satisfies the single-subject rule.

In striking down the Initiative on single-subject grounds, the Court of Appeals misapplied the operative provision of the Seattle City Charter,¹ using this requirement not as a “shield to prevent the union of diverse,

¹ Article IV, section 7 of the City’s Charter provides: “Every ordinance shall be clearly entitled and shall contain but one subject, which shall be clearly expressed in its title.”

incongruous, and disconnected matters,” as this Court intended, but rather “as a sword to strike down useful legislation not within the mischief sought to be avoided.” *City of Seattle v. Sylvester-Cowen Inv. Co.*, 55 Wash. 659, 664, 104 P. 1121 (1909) (interpreting single-subject requirement in Seattle City Charter). If affirmed, the lower court’s overreach will have significant consequences for other legislation subject to the single-subject requirement in the Seattle City Charter and, by extension, Article II, section 19 of the Washington State Constitution.² Most notably, as this Court has recognized since the early days of statehood, a rigid approach to the single-subject rule will “tie the hands of the legislature as to make legislation extremely difficult, if not impossible.” *Marston v. Humes*, 3 Wash. 267, 275, 28 P. 520 (1891).

1. Initiatives are presumed to be valid, and this Court liberally construes the single-subject requirement in favor of the legislation.

The Court of Appeals’ stringent application of the single-subject requirement is at odds with the deference this Court affords to initiative measures. “In approving initiative measures, the people exercise the same power of sovereignty as the Legislature when it enacts a statute.”

² While there are few cases interpreting the operative provision of the Seattle City Charter, courts have applied cases interpreting article II, section 19—the analogous provision in the Washington State Constitution—in similar challenges. *See, e.g., Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 781-82, 357 P.3d 1040 (2015) (*en banc*).

Washington Fed'n of State Employees v. State, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995). Accordingly, “[t]his Court presumes that an initiative is constitutional, just as it presumes the constitutionality of a statute duly enacted by the legislature.” *Washington Ass’n for Substance Abuse and Violence Prevention v. State*, 174 Wn.2d 642, 654, 278 P.3d 632 (2012) (“WASAVP”). “[C]onsequently, a party asserting that [an initiative] violates the state constitution bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt.” *Pierce County v. State*, 150 Wn.2d 422, 430, 78 P.3d 640 (2003) (internal quotations omitted); *see also Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000) (“[i]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives ... unless the errors in judgment clearly contravene state or federal constitutional provisions.”).

In addition, the single-subject requirement “is to be liberally construed in favor of the legislation.” *WASAVP*, 174 Wn.2d at 654. In particular, where as here, the title of a measure is general, *see infra*, section IV.A.2, “great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill.” *Amalgamated Transit*, 142 Wn.2d at 207; *see also Filo Foods*, 183 Wn.2d

at 784 (noting that even an “arguably tenuous” relationship between provisions is sufficient for single-subject purposes).

In short, if the Court has any doubt as to the Initiative’s compliance with the single-subject requirement, this “great liberality”—to say nothing of the presumption of constitutionality—should tip the scales in the Initiative’s favor. In any event, this deferential standard calls the Court of Appeals’ stringent reading of the single-subject rule into serious question.

2. The title of the Initiative is general rather than restrictive.

In a single-subject challenge, the level of scrutiny depends on whether the title of the challenged measure is general or restrictive. *Filo Foods*, 183 Wn.2d at 782. A title is general if it “suggests a general, overarching subject matter for the initiative,” whereas it is restrictive if “a particular part or branch of a subject is carved out and selected as the subject of the legislation.” *Id.* at 782-83 (quotations omitted). A general title may “contain[] several incidental subjects or subdivisions.” *Amalgamated Transit*, 142 Wn.2d at 207; accord *Washington Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 369, 70 P.3d 920 (2003). It need not even “contain a general statement of the subject of an act; [a] few well-chosen words, suggestive of the general subject stated, is all that is necessary.” *Amalgamated Transit*, 142 Wn.2d at 209.

As the Court of Appeals recognized, the operative title for purposes of this inquiry is the ballot title, which consists of the statement of the subject, the concise description, and the question. *Am. Hotel & Lodging Ass’n*, 6 Wn. App. 2d at 939 n.6; *see Filo Foods*, 183 Wn.2d at 782.

Here, the ballot title is general rather than specific because it sets forth a “general, overarching subject matter,” namely the well-being of hotel workers in Seattle. *See Filo Foods*, 183 Wn.2d at 782. In this respect, the ballot title is analogous to the general title in *Filo Foods*, which referenced “various provisions” but indicated that the initiative at issue “generally concern[ed] labor standards for certain employers.” *Id.* at 784. Moreover, rather than “carv[ing] out” one “particular part or branch of a subject,” *Id.* at 783, the Initiative addresses several distinct, albeit related, aspects of working conditions for hotel employees. *See WASAVP*, 174 Wn.2d 642 at 656 (noting that a general subject may “contain[] several incidental subjects or subdivisions”). Furthermore, if this were a close question, this Court would be obliged to apply the more permissive standard for general titles given the presumption in favor of initiatives and the liberal construction of single-subject requirements. *See supra*, section IV.A.1.

3. The Initiative readily satisfies the permissive standard for rational unity.

Where a title is general, this Court has required only “some rational unity between the general subject and the incidental subdivisions.”

WASAVP, 174 Wn.2d at 656 (quotations omitted). Rational unity is present where “the matters within the body of the initiative are germane to the general title and ... germane to one another.” *Id.* (quotations omitted).

This is a highly permissive standard. Indeed, as noted, “great liberality will be indulged to hold that any subject reasonably germane to [a general] title may be embraced within the body of the bill.” *Amalgamated Transit*, 142 Wn.2d at 207.

In particular, where, as here, the title “expresses a general ... purpose ... all measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title.” *Id.* at 209; *see, e.g., State v. Jenkins*, 68 Wn. App. 897, 901, 847 P.2d 488 (1993) (“Although the civil and criminal provisions within the Act cover a broad range of activities, each of those provisions furthers the legislative purpose of counteracting drug problems which are prevalent within our society.”). *Washington Ass’n of Neighborhood Stores*, 149 Wn.2d at 371 (rational unity present where each provision of challenged initiative serves initiative’s overarching purpose); *Weed v. Goodwin*, 36 Wash. 31, 33, 78 P. 36 (1904) (under Seattle City Charter, “a subject embraced in the title of an act includes all subsidiary details which are means for carrying into effect the object and purpose of the act disclosed in the subject”).

Here, just as the provisions at issue in *Filo Foods* served to establish “minimum employee benefits,” the Initiative’s provisions serve the unitary purpose of improving worker well-being within the hotel industry. 183 Wn.2d at 785; *see* SMC 14.25.010 (noting that hotel workers face a high risk of on-the-job harassment and violence, unregulated workloads, high rates of injury, low rates of access to health insurance, and poor job security); *see generally* CP 120-24, 128-32, 134-48, 150-53, 187-90. Accordingly, the Initiative falls squarely within the confines of the single-subject requirement.

In holding to the contrary, the Court of Appeals relied heavily on a line of cases that this Court has expressly distinguished under the same circumstances. *See Am. Hotel & Lodging Ass’n*, 6 Wn. App. 2d at 942 (“The initiative is, thus, more analogous to *Amalgamated Transit*, *Kiga*, and *Lee*, than to *Filo Foods*.”) (citing *Amalgamated Transit*, 142 Wn.2d at 212; *City of Burien v. Kiga*, 144 Wn.2d 819, 827, 31 P.3d 659 (2001); *Lee v. State*, 185 Wn.2d 608, 613, 374 P.3d 157 (2016)). In *WASAVP*, this Court distinguished two of those cases on grounds that “unlike the subjects at issue in *Amalgamated Transit* and *Kiga*,” the challenged initiative did not “combine a specific impact of a law with a general measure for the future.” 174 Wn.2d at 659. The same is true of the Initiative, as all of its provisions are forward-looking. *See generally* Ch. 14.25 SMC. Accordingly,

Amalgamated Transit and *Kiga* have little bearing on the single-subject question before the Court. *Lee*, which is akin to *Amalgamated Transit* and *Kiga* from a single-subject standpoint, is also inapposite. 185 Wn.2d at 622-23 (“We see no substantive difference between the one-time tax reduction coupled with a permanent change to the way all taxes are levied or assessed in *Amalgamated* and *Kiga*, which violated the single-subject rule, and the reduction of the current sales tax rate and a permanent change to the constitution or to the method for approving all future taxes and fees set forth by I-1366.”).³

The decision below is also erroneous insofar as it rests on the lower court’s conclusion that the Initiative’s provisions were not “necessary to implement” one another. *Am. Hotel & Lodging Ass’n*, 6 Wn. App. 2d at 944 (“Moreover, none of the first four parts of I-124 are necessary to implement any other part of the initiative.”). As the court acknowledged, “[a]n analysis of whether the incidental subjects are germane to one another does not necessitate a conclusion that they are necessary to implement each other.” *Id.* (quoting *Citizens for Responsible Wildlife Mgt. v. State*, 149 Wn.2d 622,

³ Setting aside *Amalgamated Transit*, *Kiga*, and *Lee*, the cases in which courts have struck down legislation on single-subject grounds are few and far between—and more importantly, readily distinguishable from the instant case. *See, e.g., Barde v. State*, 90 Wn.2d 470, 471, 584 P.2d 390 (1978) (finding single subject violation where legislation simultaneously addressed attorneys’ fees in civil replevin actions and criminal penalties for dognapping).

638, 71 P.3d 644 (2003)); *see also* *Washington Ass'n of Neighborhood Stores*, 149 Wn.2d at 370 (same). Thus, a finding that the Initiative's provisions were not necessary to implement one another should not have been fatal to the Initiative. To the extent it suggests otherwise, the decision below reinstates a requirement that this Court expressly abandoned more than fifteen years ago. *Citizens*, 149 Wn.2d at 638.

4. A stringent application of the single-subject rule thwarts effective lawmaking.

Notwithstanding this Court's calls for "great liberality," the Court of Appeals took a formalistic approach to the single-subject rule, concluding that the Initiative "identifies at least four distinct and separate purposes." *Am. Hotel & Lodging Ass'n*, 6 Wn. App. at 941 (emphasis in original). In so doing, the lower court overlooked settled jurisprudence and adopted a standard that, if left to stand, will frustrate efforts to enact comprehensive legislation.

This Court "has never favored a narrow construction of the term 'subject'" within the meaning of Article II, section 19. *Washington Fed'n of State Employees*, 127 Wn.2d at 556 (quotations omitted). "For purposes of legislation, 'subjects' are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the

general purpose of the particular legislative act.” *WASAVP*, 174 Wn.2d at 656 (quotations and alterations omitted).

Thus, a “subject” can be as “comprehensive as the legislature chooses to make it.” *Casco Co. v. Public Utility Dist. No. 1 of Thurston County*, 37 Wn.2d 777, 790, 226 P.2d 235 (1951); *accord WASAVP*, 174 Wn.2d at 655; *Marston*, 3 Wash. at 275; *see also McQueen v. Kittitas County*, 115 Wash. 672, 682, 198 P. 394 (1921) (single-subject requirement was “not intended to prevent the enactment of a complete law on a given subject, even though the provisions may be numerous and varied”). This broad discretion is critical to the ability of legislators (the people and their elected representatives alike) to develop holistic solutions to complex problems.

Indeed, this Court has long recognized the wisdom in addressing diverse but interrelated issues in the same legislation. For example, it has observed that “[i]t would be improper to overlook the impact that changes to liquor regulation could have on general public safety expenditures by local governments” by prohibiting voters from adopting a public safety earmark at the same time they privatized liquor sales. *WASAVP*, 174 Wn.2d at 657. Similarly, it has upheld legislation that addresses “fire insurance regulation and rating, fire loss, fire prevention, and fire investigation,” noting that “[t]o hold otherwise would ignore modern day realities.”

Kueckelhan v. Federal Old Line Ins. Co. (Mut.), 69 Wn.2d 392, 404, 418 P.2d 443 (1966).

Here, the people exercised their sovereign authority to adopt comprehensive legislation addressing the range of separate but intimately related issues hotel workers face in connection with their employment. In concluding that this legislation consisted of at least four distinct subjects, the Court of Appeals took a myopic view of worker well-being within this industry.

It makes little sense to protect workers from hazardous chemicals while ignoring the bodily harm associated with widespread sexual assault within this industry. It is equally nonsensical to adopt measures to protect the health and safety of hotel workers without addressing access to affordable healthcare or psychological stressors such as sexual harassment and poor job security. And it is counterproductive to ensure that hotel workers have access to quality health insurance when that coverage is tied to unstable employment. *See generally Amicus Curiae Br. of National Employment Law Project et al* (describing interrelationships between Initiative's provisions); CP 120-24, 128-32, 134-48, 150-53, 187-90.

In short, the Court of Appeals' stringent reading of the single-subject requirement "tie[s] the hands of legislators" by artificially restricting the scope of legislation. *Marston*, 3 Wn.2d at 275; *see also*

Kueckelhan, 69 Wn.2d at 403 (construing single-subject requirement liberally “so as not to impose awkward and hampering restrictions upon the legislature”).

“[H]ampering restrictions,” *id.*, are particularly troubling here, where there is no evidence of the logrolling tactics that single-subject requirements are designed to prevent.⁴ *Cf. Jenkins*, 68 Wn. App. at 902 (noting that party asserting single-subject violation “prevents no evidence to support his allegation” of logrolling and that “because all the provisions within the act work to counteract drug and alcohol problems, the Act raises no inference of special interest legislation unrelated to the Act's general purpose”); *see also Kueckelhan*, 69 Wn.2d at 404 (“In short, we find no evidence of the evils which the [single-subject rule] was designed to avoid.”); *Sylvester-Cowen Inv. Co.*, 55 Wash. at 664 (requiring Seattle City Charter’s single-subject provision to be used as a shield, not a sword).

B. RCW 35A.12.130 is not applicable to the City.

Regardless of whether the Initiative contains multiple subjects, the Court of Appeals further erred in holding that the City was constitutionally

⁴ Logrolling “occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an *unrelated* law.” *WASAVP*, 174 Wn.2d at 655 (quotations omitted and emphasis added).

bound to comply with the single-subject mandate in RCW 35A.12.130. *Am. Hotel and Lodging Ass’n*, 6 Wn. App. at 937 (citing constitutional provision prohibiting local governments from enacting regulations that conflict with state law). Aptly termed the Optional Municipal Code, Title 35A RCW only applies to “municipalities electing to be ... governed” by its terms. RCW 35A.01.010. The City of Seattle, a first-class charter city, has never made such an election. Accordingly, this Court should reverse the lower court’s holding that the Initiative violates RCW 35A.12.130 and therefore runs afoul of the Washington State Constitution.

The Optional Municipal Code was enacted in 1967 “to confer upon two *optional* classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state.” RCW 35A.01.010 (emphasis added); Laws of 1967, ch. 119. Under Title 35A RCW, new or existing cities may opt to be classified as “code cities” subject to that title. Ch. 35A.02 RCW; Ch. 35A.03 RCW.⁵

Opting-in requires specific statutory procedures. *See, e.g.*, RCW 35A.07.010 (“[a]ny city...governed under a charter may become a charter code city by a procedure prescribed in this chapter and be governed under

⁵ For a cogent description of the Optional Municipal Code and its applicability, *see* MRSC Code City Handbook, pp. 10-11, available at <http://mrsc.org/getmedia/f96b74ab-a955-44be-8db2-8fbce16075ea/Code-City-Handbook.pdf.aspx?ext=.pdf> (last visited May 28, 2019).

this title.”). The Attorney General’s Office has summarized these procedures as follows:

Action to bring a city under the code [Title 35A RCW] may be initiated either by resolution of the city's legislative body (RCW 35A.02.030 or 35A.02.070, noncharter code city; RCW 35A.08.030, charter code city) or by direct initiative petition of a certain percentage of the electorate of the city (RCW 35A.02.020 or 35A.02.060, noncharter code city; RCW 35A.08.030, charter code city).

Wash. Att’y Gen. Op. 1970 No. 5 (1970). Neither the Seattle City Council nor Seattle’s electorate has taken the requisite actions to convert the City of Seattle into a code city.⁶

Consequently, the City of Seattle remains a first-class charter city. See RCW 35.01.010; *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 804, 432 P.3d 805 (2019) (Gordon McCloud, J., dissenting) (recognizing the City of Seattle as a charter city governed by Title 35 RCW). As such, the City is governed by its charter and Title 35 RCW. Because Title 35A RCW does not bind the City of Seattle, the Court of Appeals erred in applying RCW 35A.12.130 to a Seattle initiative.

⁶ See <http://mrsc.org/Home/Research-Tools/Washington-City-and-Town-Profiles.aspx> (last visited May 28, 2019) (classifying Washington municipalities by type).

V. CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court reverse the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 31st day of May 2019.

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PROOF OF SERVICE

I certify that, on this day, I filed this document via the Clerk's electronic portal filing system, which will cause it to be served by the Clerk on all required parties.

Dated this 31st day of May 2019.

/s/ Janet Francisco
Janet Francisco, Paralegal

APPENDIX A

Chapter 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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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 employee's job classification, a different work area away from the guest for the entire duration of the guest's 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 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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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 employee's regular rate of pay for all time worked cleaning guest rooms during that day.

(Initiative [124](#), § 1, 2016.)

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 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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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 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 employee'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 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 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 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 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 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 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 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.

(Initiative [124](#), § 1, 2016.)

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 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.

"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 hotel'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 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 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.

"Stayover room" means a guest room assigned to be cleaned by an employee where the guest's 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 employer's contractors or subcontractors.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

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.

(Initiative [124](#), § 1, 2016.)

14.25.190 - Short title

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

(Initiative [124](#), § 1, 2016.)

SEATTLE CITY ATTORNEY'S OFFICE - GOVERNMENT AFFAIRS

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