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Washington State Supreme Court

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON  
Ronald R. Carpenter  
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BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and  
WASHINGTON RESTAURANT ASSOCIATION,  
Respondents/Cross-Appellants,

v.

CITY OF SEATAC, KRISTINA GREGG, CITY OF SEATAC CLERK,  
Appellants/Cross-Respondents,

and the

PORT OF SEATTLE,  
Respondent,

and the

SEATAC COMMITTEE FOR GOOD JOBS,  
Appellant/Cross-Respondent.

Filed   
Washington State Supreme Court  
MAY 22 2014   
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**BRIEF OF AMICUS CURIAE  
MASTERPARK LLC  
(SEVERABILITY)**

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**I.**  
**IDENTITY AND INTERESTS OF AMICUS**

MasterPark LLC is a locally-owned business that operates parking facilities in the City of SeaTac with shuttle bus services to Seattle-Tacoma International Airport (“Sea-Tac Airport”). MasterPark and its members actively participate in the SeaTac business community and the Southwest King County Chamber of Commerce. MasterPark has made a long-term investment within the City of SeaTac, and the city’s business climate is very important to MasterPark.

Respondents that challenged SeaTac Municipal Code 7.45 (the “Ordinance”) primarily operate businesses located on Port of Seattle property in Sea-Tac Airport and therefore are not subject to the \$15 minimum wage regulation under the Superior Court’s ruling. Indeed, Respondents’ principal argument on appeal is that the Ordinance does not apply at the airport. MasterPark, however, is located just off airport property and faces significant competition from parking facilities operated on airport property. MasterPark, therefore, brings a unique perspective to address the Superior Court’s three-sentence severability analysis and the resulting nonsensical patch quilt of minimum wage requirements that result from the invalidation of most but not all of the Ordinance.

MasterPark submits that the voters who approved the Ordinance never intended this result.

Indeed, the campaign materials distributed by the proponents of the Ordinance demonstrate that the law in effect today is very different from the law on which the residents of SeaTac voted, and it does not achieve the original Ordinance's overall purpose.

## **II.** **STATEMENT OF THE CASE**

The Ordinance was enacted “in order to ensure that, to the extent reasonably practicable, all people employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe time.” CP 751. As the definition of “transportation worker” confirms, the voters intended that the Ordinance would apply to employers on airport property and would cover airport services such as curbside passenger check-in, baggage check services, cargo handling, aircraft interior cleaning, aircraft refueling and other aviation ground support services. CP 752-53. The Ordinance also applies to a limited number of businesses that offer services that are peripheral to the airport, like offsite parking.

The Ordinance's focus on airport jobs is confirmed by the various economic studies that were conducted before the election and which were

made available to voters by *proponents* of the Ordinance. According to one such study, the Ordinance would present a net benefit to the local economy, because workers would have more money to spend locally while the increased labor costs would be mostly incurred by large, out-of-state corporations and visitors to Puget Sound region who use the airport:

- “The majority of business revenue that will pay for the living wage requirements will likely come from visitors to the Seattle region, creating a net benefit to the local economy.” CP 984.
- “The majority of covered jobs are with large corporations, some multinational, that are well-positioned to absorb labor costs.” CP 985.
- “A vast majority of covered jobs (73%) are located at Sea-Tac Airport, a unique, captured market operated by a large public authority, the Port of Seattle.” CP 985.
- “The bulk of the increased wage costs (\$33 million annually) will be absorbed by businesses operating at the airport.” CP 985.
- “Less than one of five (\$6.9 million) of total wage increase will occur in covered businesses outside the airport,

including hotels, parking garages and rental car firms.” CP 994.

The study, however, noted that the same economic analysis does not apply to off-airport parking services, because those services are generally used by local residents: “In contrast, we assume that visitors are unlikely to use off-airport parking facilities and thus attribute no share of the wage increase costs to visitors for this sector.” CP 998.

In other words, the economic impact of the Ordinance is not simply scalable based upon the number of covered jobs. Instead, the economic impacts and tradeoffs depend upon the nature of the jobs covered, and whether the Ordinance also applies to businesses operated on airport property. On the ballot, the voters of SeaTac were presented with an Ordinance that attempted to carefully balance these competing economic forces.

Respondents filed motions for summary judgment that challenged the validity of the Ordinance in its entirety. CP 897-927. On December 27, 2013, the Superior Court issued a Memorandum and Decision and Order granting in part and denying in part Respondents’ motion for summary judgment, concluding that Ordinance could not legally apply to businesses located at the airport. CP 1943-1947.

Unfortunately, the Superior Court did not analyze the differences between the Ordinance presented to the voters and the Ordinance that would be in effect based on its ruling, and answer the question of whether the record supported a conclusion that the voters would have passed the Ordinance even if it would not apply to the businesses at the airport. Instead, the Superior Court merely cited the Ordinance's severability clause and upheld the Ordinance. CP 1946-47.

The Superior Court's decision has created a nonsensical patch quilt of wage requirements with no connection to the original economic justification for the Ordinance originally presented to the voters. The wisdom of the Ordinance was heavily debated, and it is not this Court's role to second-guess the voters of SeaTac. It is, however, the role of this Court to ensure that the Ordinance in effect serves the same legislative purpose as the Ordinance presented to the voters.

Appellants City of SeaTac and SeaTac Committee for Good Jobs argue that the voters' intent is fulfilled if any employee within SeaTac receives increased wages and additional employment benefits. In other words, Appellants essentially ask this Court to ignore completely the proponents' economic justification for the original Ordinance (as well as the overall purpose the original Ordinance was intended to achieve) that was presented to and voted upon by SeaTac voters.

Respondents filed a cross-appeal that challenges The Superior Court's severability ruling. CP 2096.

### **III. LEGAL ARGUMENT**

Before reaching the question of severability, the Court must first address several legal arguments regarding the validity of the Ordinance as a whole. For example, as explained in the Answering Brief and Opening Cross-Appeal Brief of Respondents Filo Foods, LLC *et al.*, the Ordinance violates the single subject rule. If the Court agrees, no severability analysis will be required. *See City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001) (“When an initiative embodies two unrelated subjects, it is impossible for the court to assess whether either subject would have received majority support if voted on separately. Consequently, the entire initiative must be voided.”).

If the Court decides that the Ordinance is constitutional and is otherwise consistent with state and federal law, the Court must then decide whether the Ordinance applies to businesses at the airport. If the Ordinance applies to businesses at the airport, businesses within SeaTac that are peripheral to the airport will be on a level playing field with their competitors on airport property, and the Court again will not need to address the severability issue.

If, however, the Court upholds the Superior Court’s ruling that the Ordinance does not apply to businesses at the airport, the severability issue must be addressed. The Court must then decide whether the record supports a conclusion that the voters would have passed the Ordinance if they knew it would only apply to a limited number of businesses around the airport and specifically to businesses like MasterPark that serve local residents.

**A. Legal Standard for Severability**

The purpose of the severability analysis is to determine whether the voters would have enacted the valid portions of the law without the invalid portions. Although the Ordinance contains a severability clause, this fact is not dispositive. *Leonard v. City of Spokane*, 127 Wn.2d 194, 201, 897 P.2d 358 (1995). “[A] severability clause will not save other portions of the act [1] if the court nonetheless decides that the Legislature probably would not have passed the remaining portion of the act without the invalid part or [2] if we believe the remaining valid enactment would not reasonably accomplish the legislative purpose.” *Lynden Transp., Inc. v. State*, 112 Wn.2d 115, 124, 768 P.2d 475 (1989) (emphasis added). Rather, “the proper remedy is complete statutory invalidation rather than changing legislative intents by upsetting the legislative compromise.” *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 67, 109 P.3d 405 (2005).

Under the first prong of the severance test, it is not sufficient to find that a law can still achieve some, but not all, of its intended purposes. *See Hall v. Niemer*, 97 Wn.2d 574, 583-84, 649 P.2d 98 (1982). If the invalid portions of the law eliminate a key component of the legislation, the Court will invalidate the entire law. *Leonard*, 127 Wn.2d at 202. Put differently, if applying a severance clause would “create a program quite different from the one the legislature actually adopted,” the Court should rule the entire law invalid. *See Sloan v. Lemon*, 413 U.S. 825, 833-34 (1973).

Under the second prong of the severance test, the Court cannot determine that a law is severable simply by finding that the people would have voted for the valid portions of the law if those sections were presented in a separate bill or initiative. Instead, the Court must consider the purposes of the entire law and determine whether the voters would have voted for it knowing that certain portions would be ineffective. *See Hall*, 97 Wn.2d at 582-83 (refusing to sever law because overall purpose of the law would not be served by enforcing valid portion of law even though the Court was persuaded that the Legislature would have passed valid portion without invalid portion).

**B. Severing the Ordinance Would Upset the Legislative Compromise.**

When evaluating the legislative intent of an initiative, a court may look to extrinsic evidence of the voters' intent such as statements in the voters' pamphlet. *See Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 747, 257 P.3d 586 (2011) (citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205-06, 11 P.3d 762 (2001)). When reviewing this legislative history, the Court should not substitute its judgment for the judgment of the voters regarding the wisdom of the Ordinance. Rather, the Court must evaluate whether the record supports a conclusion that the Ordinance without the invalid portions would still achieve the Ordinance's *overall* purpose. The answer is clearly "no" under both prongs of the severance test.

In the voters' pamphlet, the proponents of the Ordinance presented an economic argument based on its application to "big overseas and multinational corporations" that operated at the airport:

Since the start of the recession, millions of dollars have been cut from our vital community services and local families are struggling. Meanwhile, big overseas and multinational corporations doing business at the airport racked up *hundreds of millions in profits* last year -- yet continue to use the recession as an excuse to cut wages, hours, and benefits. This hurts all of SeaTac.

CP 809. The Ordinance's focus on businesses at the airport is confirmed by the definition of "transportation employer" and its references to curbside passenger check-in services, baggage check services, cargo handling, aircraft interior cleaning, aircraft refueling and other aviation ground support services. CP 752-53.

The proponents of the Ordinance presented voters with an economic study by Puget Sound Sage to support their arguments in favor of the Ordinance. According to the Puget Sound Sage study, "The majority of business revenue that will pay for the living wage requirements will likely come from visitors to the Seattle region, creating a net benefit to the local economy." CP 984. In other words, the study is based upon the same economic premise as the statements in the voter pamphlet. An examination of this study, however, confirms that applying the Ordinance to businesses that are peripheral to the airport, but not businesses at the airport, would undermine the economic justification for the Ordinance.

Under the Ordinance presented to the voters, "[a] vast majority of covered jobs (73%) are located at Sea-Tac Airport, a unique, captured market operated by a large public authority, the Port of Seattle." CP 985. Under the Ordinance in effect after the Superior Court's ruling, none of the covered jobs are located at Sea-Tac Airport.

Under the Ordinance presented to the voters, “[t]he bulk of the increased wage costs (\$33 million annually) will be absorbed by businesses operating at the airport.” CP 985. Under the Ordinance in effect after the Superior Court’s ruling, none of the increased wage costs will be absorbed by businesses operating at the airport.

Under the Ordinance presented to the voters, “[t]he majority of covered jobs are with large corporations, some multinational, that are well-positioned to absorb labor costs.” CP 985. Under the Ordinance in effect after the Superior Court’s ruling, the Ordinance will apply to local businesses like MasterPark but not its competitors on airport property. This has created a nonsensical patch quilt of minimum wage requirements as shown by Appendix A.

Most importantly, the Ordinance in effect after the Superior Court’s ruling no longer serves the basic economic justification for the Ordinance. This economic justification is based on the representation to voters that “[t]he majority of business revenue that will pay for the living wage requirements will likely come from visitors to the Seattle region, creating a net benefit to the local economy.” CP 984. The Puget Sound Sage study itself, however, concedes that this economic justification does not apply to offsite parking facilities like MasterPark: “we assume that

visitors are unlikely to use off-airport parking facilities and thus attribute no share of the wage increase costs to visitors for this sector.” CP 998.

Based on the economic justification presented to the voters, there is only one possible reason for off-airport parking facilities like MasterPark to be covered by the Ordinance: the voters of SeaTac believe that parking facilities in the City of SeaTac should compete on a level playing field by providing the same compensation and benefits to their employees.

MasterPark agrees with this basic principle of fairness, but the Ordinance in effect after the Superior Court’s ruling turns this principle on its head.

Now, parking facilities on airport property have an unfair—and unintended—competitive advantage over other parking facilities in SeaTac.

This unfairness between businesses on and off airport property can be highlighted by MasterPark’s own business. MasterPark’s facilities are located just off airport property. With the exception of WallyPark, all of MasterPark’s closest competitors to the airport are not required to comply with the Ordinance under the Superior Court’s ruling. These “exempt” lots are Doug Fox Parking, which leases a parking lot on airport property, and the Port of Seattle’s own parking operations, which recently expanded its number of parking spots with the relocation of the rental car facilities. According to the Puget Sound Sage study, MasterPark now faces a legal

requirement that results in 22% higher wages than its competitors on airport property. In addition, MasterPark's competitors are exempt from the other requirements of the Ordinance, including: paid sick leave, tipping, full-time work and worker retention regulations. We submit that the voters of SeaTac never intended to approve a system that creates an unfair competitive advantage to businesses located on airport property.

Indeed, there is nothing in the legislative history to suggest that the voters would have approved the Ordinance if they knew that it would not apply to businesses operated on airport property. Indeed, all of the justifications for the Ordinance were based on its application to employers that operate their businesses on airport property. As a result, this Court should not conclude that the voters would have approved the Ordinance in effect under the Superior Court's ruling.

Appellants City of SeaTac and SeaTac Committee for Good Jobs argue that the voters' intent would be fulfilled if any employee within SeaTac receives increased wages and additional employment benefits. Appellants cite no legal authority for their argument and simply misstate the severance test. The severance test is not whether the severed Ordinance can still achieve some, but not all, of its intended purposes, or even whether the voters might have passed the valid portion of the Ordinance. *See Hall*, 97 Wn.2d at 582-84. Rather, the test is whether

severing the Ordinance will eliminate a key provision of the legislative compromise.

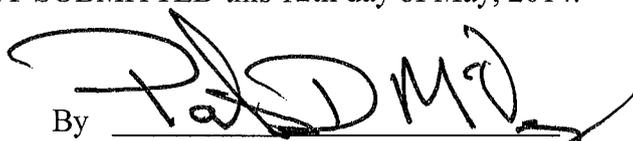
There can be no question that proponents of higher minimum wage laws want to raise the wages of SeaTac workers who provide services to out-of-state corporations and visitors, and MasterPark does not object to minimum wage laws that apply equally among competitors. But there is no basis for a conclusion that enforcing the Ordinance against off-site parking facilities like MasterPark would satisfy the legislative compromise presented to SeaTac voters. The Ordinance was presented to SeaTac voters as primarily placing the cost of higher wages on out-of-state corporations and visitors to the airport, while preserving a level playing field between businesses on and off airport property. The Ordinance in effect after the Superior Court's ruling does not achieve the overall legislative objective of the Ordinance, and it creates an unlevel playing field between on- and off-airport parking services.

#### **IV.** **CONCLUSION**

Respondents have explained why the Ordinance is invalid in its entirety based on both state and federal law. If, however, the Court concludes that the Ordinance does not apply to businesses on airport property for jurisdictional reasons, the Court should also conclude that the

entire law is invalid. Indeed, enforcing the Ordinance against MasterPark and other local businesses that serve local residents would not further the economic justification for the Ordinance as a whole, and would completely overturn the legislative compromise at the heart of the Ordinance. Accordingly, the Court should hold that the Ordinance is invalid in its entirety.

RESPECTFULLY SUBMITTED this 12th day of May, 2014.

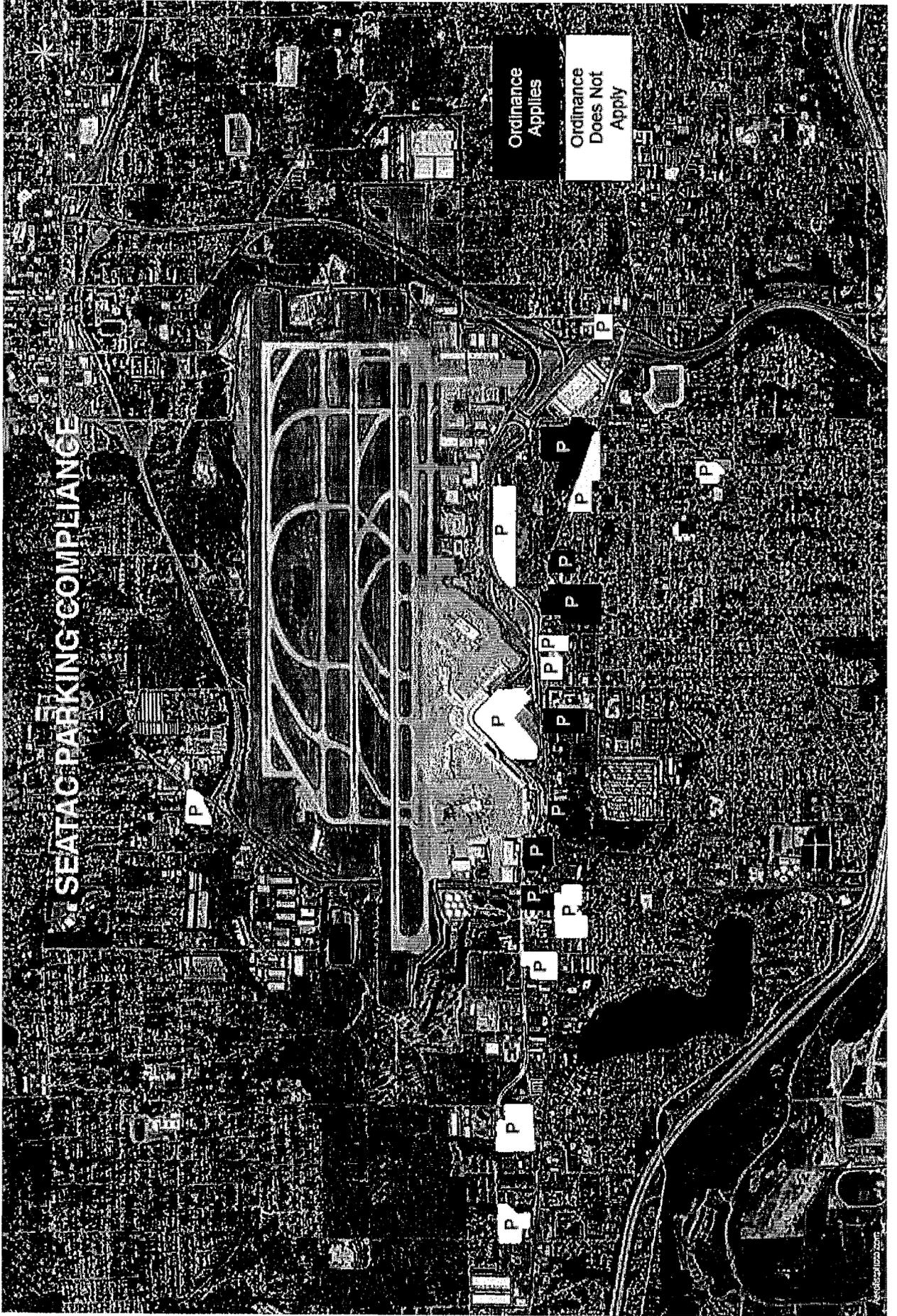


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APPENDIX A



**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of May, 2014, I caused to be served via email and U.S. Mail a copy of the **Brief of Amicus Curiae MasterPark LLC** on the following:

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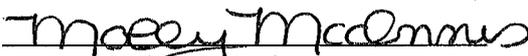
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