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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

FILO FOODS, LLC; BF FOODS, LLC;
ALASKA AIRLINES, INC; and THE
WASHINGTON RESTAURANT
ASSOCIATION

Plaintiffs,

v.

THE CITY OF SEATAC and KRISTINA
GREGG, CITY OF SEATAC CITY CLERK, in
her official capacity

Defendants.

No.

APPLICATION FOR WRITS OF
REVIEW, MANDATE, AND
PROHIBITION

and

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs, by and through their undersigned counsel, allege the following:

I. INTRODUCTION

On or about June 5, 2013, the SeaTac Committee for Good Jobs filed an initiative petition and proposed ordinance entitled “Ordinance Setting Minimum Standards For Hospitality and Transportation Industry Employers” (the “Ordinance”) with the City of SeaTac City Clerk’s office.¹ The Ordinance, if adopted, would amend the SeaTac Municipal Code (“SMC”) to impose a series of unprecedented requirements and restrictions on certain private employers in

¹ A true and correct copy of the proposed Ordinance filed with the City of SeaTac City Clerk’s office is attached hereto as Exhibit A.

1 the hospitality and transportation industries. Among other things, the Ordinance would impose
2 the highest minimum wage in the country (increasing the minimum wage in the city, but only for
3 certain industries, by 68%; regulate how tips are shared among employees; restrict employers'
4 ability to hire additional part-time workers; impose retention and successorship obligations that
5 restrict employers' right to select their own employees; impose costly sick and safe time
6 obligations on employers; and subject employees' confidential medical information to public
7 review. Moreover, the Ordinance can be enforced by any person or entity, without regard for
8 whether they have been harmed by a violation or are even employed or doing business in the
9 City of SeaTac.

10 In its processing of the proposed Ordinance, the City of SeaTac has failed to follow the
11 procedures required for the processing of initiatives set out in the SeaTac municipal code, and
12 the Ordinance exceeds the power of the City of SeaTac to adopt legislation, by initiative or
13 otherwise.

14 Specifically,

- 15 (a) the number of valid signatures on the initiative petition is not sufficient to
16 advance the measure to the City Council for action or for placement on the
17 November ballot;
- 18 (b) the City of SeaTac did not perform a review of the legality and sufficiency of the
19 title and text of the Ordinance, as required by SMC 1.10.140, prior to issuing a
20 Certificate of Sufficiency regarding the initiative petition (thus potentially
21 misleading the City Council and voters regarding the measure's legality);
- 22 (c) the Ordinance exceeds the scope of the City of SeaTac's initiative power and
23 legislative authority. The Ordinance addresses multiple subjects, and those

1 subjects are not reflected in the title; the measure conflicts with state and federal
2 law; and many provisions purport to regulate aspects of the employment
3 relationship that are preempted by federal law; and

4 (d) the City of SeaTac failed to create a Petition Review Board to consider and act
5 upon any evidence or reports of matters relating to initiative petitions which the
6 Board may determine warrant investigation or legal action.

7 **In Part One** on this suit, Plaintiffs seek writs, pursuant to SMC 1.10.210, reversing the
8 City Clerk's decision to issue a Certificate of Sufficiency; prohibiting further action until the
9 City Clerk reviews the legality and sufficiency of the title and text of the Ordinance as required;
10 and mandating that the City conduct the review required by SMC 1.10.140.

11 **In Part Two** of this suit, Plaintiffs seek a judgment declaring that the proposed
12 Ordinance exceeds the scope of City of SeaTac's initiative power and legislative authority and a
13 Writ of Prohibition or an injunction prohibiting the City of SeaTac or the City Clerk from
14 forwarding the proposed Ordinance to the City Council for action and from taking any other
15 action to forward the Ordinance to King County for placement on a ballot for an election.

16 II. PARTIES, JURISDICTION, AND VENUE

17 1. Plaintiffs Filo Foods LLC and BF Foods LLC. Plaintiffs Filo Foods LLC ("Filo")
18 and BF Foods LLC ("BF Foods") are Washington limited liability corporations located in the
19 City of SeaTac. Filo and BF Foods are small food and beverage concessionaires operating out
20 of SeaTac Airport, employing ten or more nonmanagerial, nonsupervisory employees. If the
21 proposed Ordinance is adopted, Filo and BF Foods would be directly affected by the proposed
22 Ordinance in several ways, including the following: (A) If Filo or BF Foods seek to operate in
23 a new location, they would be forced to hire the employees of the business which had
previously operated out of that location. If that happened, then their current employees could

1 lose their jobs. (B) The employees of Filo Foods and BF Foods have not chosen to be
2 represented by a union, but the proposed ordinance improperly encourages unionization and
3 collective bargaining. (C) Filo's and BF Foods' labor costs would increase dramatically. (D)
4 Filo and BF Foods, like other concessionaires operating out of SeaTac Airport, have a
5 contractual obligation to offer "street pricing." Street pricing prohibits Filo and BF Foods from
6 passing increased labor costs to its customers, and Filo and BF Foods could be forced to take
7 steps, damaging to its business, in order to keep expenses from exceeding revenues (such as
8 laying off employees or cutting back on the quality and quantity they offer customers). (E) It
9 is industry practice for employees to engage in tip pooling, allowing cooks, dishwashers,
10 runners, expeditors, hostesses, bartenders, and others to participate in tips as part of the tip
11 system. If the proposed Ordinance is passed, then some of Filo's and BF Foods' employees
12 would lose tips as part of their compensation.

13 2. Plaintiff Alaska Airlines, Inc. Plaintiff Alaska Airlines, Inc. ("Alaska") is an
14 Alaska corporation with its headquarters in the City of SeaTac. Alaska provides passenger air
15 transportation and related services, by itself and through contractors, at the Seattle-Tacoma
16 International Airport (hereinafter, "SeaTac Airport"). Alaska would be directly affected by the
17 proposed Ordinance in several ways, including the following: (A) In providing services to
18 Alaska and its passengers, Alaska's four major contractors employ in excess of 500 full-time
19 employees in those efforts. If the proposed Ordinance were adopted and applied to Alaska's
20 contractors, their labor costs would increase dramatically. If that happened, because of how
21 pricing is determined in the agreements with these contractors, the prices charged by the
22 contractors to Alaska would increase dramatically as well. Alaska would have to pass some or
23 all of that price increase on to its customers, and the market for air transportation services is

1 price sensitive. (B) It is a customary practice in the industry for airlines to provide some
2 services to each other. The measure purports to exempt certified air carriers performing
3 services such as passenger check-in, baggage check, wheelchair escort, baggage handling, and
4 other support services “for itself,” but it does not exempt air carriers performing such services
5 for other airlines. Any air carriers, including Alaska, who participate in this customary practice
6 would be directly affected by the proposed Ordinance. (C) By drastically increasing the labor
7 costs to the hospitality and transportation industries in SeaTac, the proposed Ordinance would
8 make hotel rooms, rental cars, and parking more expensive, and this will make Seattle a more
9 expensive destination and transportation hub. A large portion of Alaska’s business comes from
10 travelers flying to Seattle, and if Seattle becomes a more expensive destination, Alaska’s
11 business would suffer.

12 3. Plaintiff Restaurant Association of Washington. Plaintiff Restaurant Association
13 of Washington is a trade association representing and advocating the interests of the restaurant
14 industry in Washington. Many of its members will be adversely affected by the proposed
15 Ordinance, including the ways it would affect Plaintiffs Filo Foods, LLC and BF Foods, LLC.

16 4. Serious Public Importance. In addition to causing the harms suffered or likely to
17 be suffered by the Plaintiffs herein, the proposed Ordinance and its legality are matters of
18 serious public importance and immediately affect substantial segments of the population. The
19 disposition of this matter will have a direct bearing on commerce, finance, labor, and industry.

20 5. Defendant City of SeaTac. Defendant City of SeaTac (the “City”) is a non-
21 charter code city and a municipal corporation organized and existing under the laws of the
22 State of Washington and does business in King County, Washington.

- b. Increases the minimum wage each year.
- c. Excludes tips, gratuities, service charges, and commissions from the minimum wage.

Sick Leave.

- a. Mandates the employers in the Hospitality and Transportation Industry provide employees with immediate entitlement to accrue and to use one hour of paid sick and safe time for every 40 hours worked.
- b. Requires that employers pay employees a lump sum payment at the end of the calendar year equivalent to the compensation due for any accrued but unused sick and safe time.
- c. Regulates the reasons why an employee is entitled to sick and safe time.
- d. Does not allow employers to documentation to support a request for or safe sick time.
- e. Requires that employers retain records documenting sick and safe time, including medical certifications, re-certifications, and medical histories of employees and their family members and make such records available for inspection by the SeaTac City Manager.

Restricting Employment.

- a. Interferes with the ability of employers to hire additional workers and subcontractors by requiring that employers offer extra hours of work to qualified part time employees before hiring additional part-time employees and subcontractors.

Tip Pooling.

- a. Requires that any service charge or tips be retained by or paid to the employee who performs the services for which the tip or service charge is collected.
- b. Requires that tips and service charges be pooled and distributed among the workers who perform services.
- c. Prohibits the distribution of tips to employees who do not directly provide the services at issue, regardless of an employer's alternative legal tip pooling system.

Retention Of Employees.

- a. Requires that an employer give notice to all employees 60-days prior to the termination of a contract. The proposed ordinance does not define what kind of contract must be terminated to trigger this requirement.
- b. Interferes with the ability of parties to contract for the provision of services and employers' ability to arrange its workforce by requiring that a successor employer

1 retain the employees of the predecessor employer, before hiring additional employees
2 or transferring workers from elsewhere, regardless of the successor employer's needs
or desire to retain its own employees.

- 3 c. Requires that employees of a predecessor employer be employed for no less than 90-
4 days once hired, regardless of the successor employer's needs.
- 5 d. Requires that employees of a predecessor employer be offered positions according to
seniority, regardless of the successor employer's policies, practices, or needs.

6 **Recordkeeping Requirements.**

- 7 a. Invades the privacy of employees by requiring that employers maintain and make
available for inspection numerous personnel records.
- 8 b. Imposes liability on employers for substantive violations of the ordinance based
9 solely on a lack of records.

10 **Enforcement.**

- 11 a. Abrogates State law standing requirements by allowing any person (defined to
12 include associations, corporations, and other "entities") to bring a complaint against
an employer in King County Superior Court regardless of whether or not the suing
"person" is injured.
- 13 b. Requires the City of SeaTac to adopt auditing procedures sufficient to monitor and
14 ensure compliance, investigate complaints, and initiate legal action to remedy
violations.

15 **Protected Activity.**

- 16 a. Prohibits retaliation against employees who engage in certain protected activity.
- 17 b. Defines protected activity to include communicating with a union about alleged
18 employer violations of the Ordinance.

19 **Waiver.**

- 20 a. The provisions of the Ordinance apply to all covered employers, and individual
employees cannot agree to waive any of its provision, but
- 21 b. The burdens of the Ordinance may be avoided if the covered employer enters a "bona
22 fide" collective bargaining agreement with a union that includes a waiver of the
provisions.
- 23

1 **Application.**

2 The Ordinance applies to employers that operate or provide the following services within
3 the City of SeaTac:

- 4 a. Transportation services including, but not limited to, curbside check-in and baggage
5 handling, cargo handling, aircraft cleaning and washing, and aircraft fueling.
- 6 b. Any janitorial and custodial service, facility maintenance service, security service, or
7 customer service performed in a facility where transportation services are also
8 performed, regardless of whether these secondary services are related to the
9 transportation services.
- 10 c. Rental car, shuttle transportation, and parking lot management services.
- 11 d. Hotels with one hundred or more guest rooms.
- 12 e. Foodservice or retail provided in public facilities, corporate cafeterias, conference
13 centers and meeting areas, and hotels.

14 **IV. PART ONE: APPLICATION FOR WRITS PURSUANT TO SEATAC
15 MUNICIPAL CODE 1.100.210 AND RCW 7.16**

16 **A. Limits on the Initiative Power in Municipalities.**

17 12. RCW 35A.11.080 – RCW 35A.11.100 allows non-charter code cities such as the
18 City of SeaTac to provide for direct legislation by the people through initiatives. RCW
19 35A.11.100 allows such cities to exercise its initiative powers generally “in the manner set
20 forth for the commission form of government in RCW 35.17.240 through 35.17.360”. This
21 municipal initiative power, however, is limited. The “subject in title” and “single subject”
22 rules that apply to state-wide initiatives also apply to SeaTac initiatives. RCW 35A.12.130;
23 SMC 1.10.080. These rules ensure that legislators and voters both know what they are voting
for or against and that they are not forced to adopt legislation on one topic that they do not
approve in order to pass legislation on another topic that they do support. In addition, a
municipality such as the City of SeaTac does not have the power to adopt legislation by
initiative that conflicts with the United States or Washington State constitutions, or with other
state or federal laws. SMC 1.10.140; Wash. Const. art. XI, § 10. Likewise, a municipality does

1 not have the power to adopt legislation by initiative that purports to regulate issues preempted
2 by federal law. *City of Seattle v. Burlington N. R.R.*, 145 Wn.2d 661 (2002).

3 13. Legislation proposed by initiative often has not had the benefit of research,
4 negotiation, compromise, and other checks and balances of the legislative process and, as a
5 result, can reflect a myopic or one-sided view of an issue or problem. Because an initiative
6 may not have been vetted by legislative staff and counsel, legislation proposed by initiative
7 often turns out to be in conflict with or preempted by state or federal legislation. *Wash.*
8 *Citizens Action of Wash. v. State*, 162 Wn.2d 142 (2007); *City of Sequim v. Malkasian*, 157
9 Wn.2d 251 (2006); *Amalgamated Transit v. State*, 142 Wn.2d 183 (2000).

10 14. The SeaTac municipal code imposes safeguards to reduce some of the risks of
11 legislating by initiative. SMC 1.10.140 requires that before an ordinance proposed by initiative
12 may be passed to the City Council for either adoption or placement on the ballot at the next
13 election, the City Clerk, in consultation with the City Attorney, must review and approve the
14 “legality” of the “title and text” of the proposed measure either before initiative sponsors begin
15 collecting signatures or, if such prior approval was not provided, then prior to forwarding the
16 proposed Ordinance to the City Council for action (either adopting it or putting it on the ballot
17 at the next election). SMC 1.10.110 requires that a proposed Ordinance be supported by
18 petitions containing valid signatures from the number of registered voters of the City equal to
19 at least fifteen percent (15%) of the total number of names of persons listed as registered voters
20 within the City on the day of the last preceding City general election. SMC 1.10.140 sets out
21 the criteria for determining whether signatures are valid.

22 15. With respect to the proposed Ordinance, the City Clerk has issued a Certificate of
23 Sufficiency and has announced her intention to present the measure to the City Council on

1 July 8, 2013. The City Clerk issued this certificate based on an insufficient number of valid
2 signatures and without reviewing the legality of the measure as required by SMC 1.10.140.
3 Absent immediate action by the Court, the City of SeaTac will be allowed to act in excess of its
4 initiative power and legislative authority by placing an unlawful measure on the
5 November 5, 2013 ballot.

6 **B. Allegations**

7 **1. The City Issued a Certificate of Sufficiency Without Reviewing the**
8 **Legality and Sufficiency of the Title and Text of the Ordinance**

9 16. RCW 35A.11.080 – RCW 35A.11.100 and SMC 1.10.040 grant the voters of the
10 City the powers of initiative and referendum subject to the limitations of state law, the general
11 law, and the City’s initiative and referendum procedure.

12 17. SMC 1.10.100 requires that a sample petition be submitted to the City Clerk
13 before an initiative can be distributed to the public for the solicitation of signatures.

14 18. Pursuant to SMC 1.10.100(C), the sponsor of an initiative petition may request
15 that the City Clerk, with advice of the City Attorney, review, require changes, and/or approve
16 the content and format of the petition and the title and text of the proposed ordinance prior to
17 obtaining signatures. If the sponsor does not request review, the City Clerk, with advice of the
18 City Attorney, shall determine the legality and sufficiency of the title and text of the proposed
19 ordinance before the petition is referred to City Council for adoption or referral to the King
20 County Department of Elections. SMC 1.10.140. Thus, at some point prior to referring any
21 ordinance proposed by petition to the City Council, the City Clerk must review the legality of
22 the title, content, and text of the measure.

23 19. On or about April 26, 2013, SeaTac Committee for Good Jobs and SeaTac
residents Mahad Aden, Joseph Diallo, Patricia L. Reid, and Chris Smith (collectively, the

1 “Petition Sponsors”) submitted a sample petition to the SeaTac City Clerk. The Petition
2 Sponsors requested, pursuant to SMC 1.10.100(c), that the City Clerk, with the advice of the
3 City Attorney, review the content and format of the petition, including the title and text of the
4 proposed ordinance.

5 20. Following their submission of the Ordinance, the Petition Sponsors consulted
6 with the City Attorney regarding the format of the Ordinance so that, if passed, it could easily
7 be codified in the Municipal Code.

8 21. On or about May 1, 2013, the Petition Sponsors resubmitted a revised version of
9 the sample petition to the SeaTac City Clerk. The revised version of the sample petition was
10 similar to the original submission but with some minor corrections.

11 22. On or about May 1, 2013, the City Clerk approved the format of the petition.
12 Neither the City Clerk nor the City Attorney made any determination with regard to the legality
13 and sufficiency of the title, content, or text of the proposed ordinance prior to the petition being
14 distributed to the public for the solicitation of signatures.

15 23. On or about May 9, 2013, the City’s Legal Department issued an opinion that the
16 subject matter of the Ordinance was an area that could be regulated by the City. The opinion
17 was issued in response to a request by City Councilmember Pam Fernald. Although the
18 opinion found that the City could regulate “wages, hours, and other working conditions,” the
19 opinion specifically addressed only the Ordinance’s minimum wage and safe and sick time
20 provisions. The Legal Department did not consider, and the opinion did not address, any other
21 aspects of the Ordinance’s legality.

22 24. On or about June 19, 2013, the City Clerk issued a memorandum stating that she
23 had determined the legality and the sufficiency of the title and text of the proposed Ordinance.

1 The City Clerk determined only that “The proposed Ordinance is a subject that can be
2 submitted to the City via the Initiative process.” The City Clerk did not make any other
3 determinations regarding the legality and sufficiency of the title and text of the Ordinance.

4 25. SMC 1.10.170 creates a Petition Review Board (consisting of the Mayor, City
5 Manager, and Police Chief) to review any matters relating to initiative petitions which warrant
6 investigation, report to the City Council, or legal action. The Petition Review Board has never
7 met to consider the proposed Ordinance.

8 26. On or about June 21, 2013, Plaintiff Alaska, along with the Southwest King
9 County Chamber of Commerce and the Association of Washington Business, sent a letter to
10 the City Clerk asking, among other things, whether she had considered various issues with
11 regard to the legality and sufficiency of the title and text of the Ordinance and if not, when she
12 intended to do so. Alaska further requested that the City Clerk convene a Petition Review
13 Board to consider the Ordinance before further processing the proposed ordinance. The City
14 Clerk did not respond to Alaska’s letter or request.

15 27. On July 2, 2013, Plaintiffs Alaska, Filo, and BF Foods sent a letter to the City
16 Clerk petitioning the City of SeaTac to convene a Petition Review Board to consider the
17 legality and sufficiency of the title, text, and content of the proposed Ordinance. Other than
18 acknowledging receipt of this letter, the City Clerk has not responded to this request by
19 Plaintiff Alaska.

20 **2. The City Issued a Certificate of Sufficiency Even Though the**
21 **Signatures on the Initiative Petition Are Not Sufficient**

22 28. On or about June 5, 2013, SeaTac Committee for Good Jobs filed with the City
23 Clerk copies of the petition in support of the Ordinance signed by 2,506 individuals. The City
Clerk forwarded the copies of the petition to the Superintendent of Elections of the King

1 County Department of Elections to check compliance with the signature requirements of SMC
2 1.10.140.

3 29. The Superintendent of Elections of the King County Department of Elections, as
4 ex officio supervisor of city elections, examined signatures on the petition.

5 30. On or about June 20, 2013, the Superintendent of Elections of the King County
6 Department of Elections completed verification of the signatures on the petition. The
7 Superintendent of Elections of the King County Department of Elections “verified” 2,283
8 signatures of the 2,506 signatures submitted with the petition, meaning the County examined
9 those signatures to determine if they should be counted. Of the 2,283 verified signatures, the
10 Superintendent of Elections of the King County Department of Elections “challenged” 668
11 signatures, meaning it rejected them either because they were not signatures from registered
12 voters living in the City of SeaTac or they failed to satisfy the requirements of SMC 1.10.140.
13 The Superintendent of Elections of the King County Department of Elections determined that
14 the remaining 1,615 signatures were valid signatures from registered voters living in SeaTac.
15 SMC 1.10.110 requires that to qualify for mandatory consideration by the City Council and
16 placement on the ballot at the next election, the petition be signed by 1,536 registered voters.

17 31. The Superintendent of Elections of the King County Department of Elections
18 determined that 44 individuals signed the petition multiple times. SMC 1.10.140 requires that
19 when a person signs a petition two or more times, all signatures, including the original, must be
20 stricken. King County did not strike (and instead counted) the original signature when a
21 person signed the petition two or more times. Those 44 original signatures should have been
22 rejected.
23

1 32. One hundred thirty six of the signatures that were found sufficient and counted by
2 the Superintendent of Elections of the King County Department of Elections did not include a
3 date as required by law. SMC 1.10.140 requires that signatures be followed by a date that is
4 not more than six months prior to the date of filing of the petition. Signatures not followed by
5 a date should have been rejected. King County did not reject, and instead counted, 136
6 signatures that did not have dates.

7 33. Thirty six of the signatures that were found sufficient and counted by the
8 Superintendent of Elections of the King County Department of Elections plainly were dated by
9 an unknown third party, on an unknown date. SMC section 1.10.140 requires that signatures
10 that have been altered shall be invalid and shall not be counted. The Superintendent of
11 Elections of the King County Department of Elections improperly counted these signatures.

12 34. Thirty eight of the signatures that were found sufficient and counted by the
13 Superintendent of Elections of the King County Department of Elections appeared on petition
14 pages that did not have a copy of the proposed Ordinance attached to them as required by law.
15 SMC 1.10.080 requires that a copy of the petition be attached to every single petition signature
16 page. These 38 signatures should have been rejected.

17 35. Twelve signatures did not include an address. The format of the petition
18 mandated by SMC 1.10.080 requires that each registered voter provide their address when they
19 sign. The Superintendent of Elections of the King County Department of Elections improperly
20 counted these signatures, and they should have been excluded.

21 36. Thus, 266 were found sufficient and counted that should have been rejected by the
22 Superintendent of Elections of the King County Department of Elections. Because those
23

1 signatures were not valid and should have been rejected under SMC1.10.140, the petition is
2 supported only by, at most, 1349 signatures, fewer than the 1,536 required by SMC 1.10.110.

3 37. On June 20, 2013, the Superintendent of Elections of the King County
4 Department of Elections certified to the City Clerk that the petition was supported by a
5 sufficient number of valid signatures.

6 38. On June 28, 2013, the City Clerk issued a Certificate of Sufficiency with regard to
7 the petition. This Certificate of Sufficiency was improperly issued because the petition was
8 not, in fact, supported by a significant number of valid signatures; because the City Clerk failed
9 to conduct the required review of the legality of the measure; and because the Petition Review
10 Board has not yet considered any aspect of the petition, despite requests to do so.

11 39. The SeaTac City Attorney is scheduled to present the Ordinance to the City
12 Council and answer questions on July 9, 2013, and on July 23, 2013, the City Council is
13 scheduled to vote on whether to adopt the Ordinance. Pursuant to SMC 1.10.220, if the City
14 Council does not adopt the proposed (and unlawful) ordinance, the City Clerk will forward it to
15 King County for placement on the ballot for the November 5, 2013, election.

16 **C. Claims For Relief In Part One**

17 40. In Part One of this Application and Complaint, Plaintiffs seek the issuance of
18 writs pursuant to SMC 1.10.210 and RCW 7.16.

19 41. Writ of Review. The determination by the City Clerk that the petition is
20 supported by a sufficient number of valid signatures should be reviewed and reversed. Before
21 a Certificate of Sufficiency may be issued, the City Clerk was required to determine that the
22 Petition was signed by the number or registered voters of the City equal to at least fifteen
23 percent (15%) of the total number of names of persons listed as registered voters within the
City on the day of the last preceding City general election. SMC 1.10.100. The City Clerk

1 relied on a certification by the Superintendent of Elections of the King County Department of
2 Elections, but as explained above, the Superintendent improperly counted at least 266
3 signatures that failed to meet the requirements of SMC 1.10.140 and thus should have been
4 rejected.

5 42. This court should issue a Writ of Review, pursuant to SMC 1.10.210 and RCW
6 7.16.040 and reverse the determination that the Petition is supported by the necessary
7 signatures, which determination necessarily underlies the City Clerk's June 28, 2013,
8 Certificate of Sufficiency.

9 43. Writ of Prohibition. The City Clerk has failed to make the required review of the
10 legality and sufficiency of the title, content, and text of the proposed Ordinance. Any review
11 conducted by the City Clerk so far was limited to the format of the petition and the narrow
12 question of whether the City had the authority, generally, to regulate wages and hours of
13 employees in the City. The City has thus far ignored a request that the City conduct a proper
14 review of the Ordinance and convene the Petition Review Board created for this purpose by
15 SMC 1.10.170.

16 44. This court should issue a Writ of Prohibition, pursuant to SMC 1.10.210 and
17 RCW 7.16.300, forbidding the City and the City Clerk from taking any further action with
18 regard to the Ordinance, including, but not limited to, taking any action necessary to place the
19 proposed Ordinance before the City Council for adoption or taking any action to place the
20 Ordinance on the November 5, 2013 ballot until after the City Clerk undertakes the required
21 review of the legality of the title, text, and content of the proposed Ordinance and then
22 determines: (a) that the title, text, and content of the proposed Ordinance are legal and
23 sufficient and (b) that the petition was validly signed by the required number of registered

1 voters (valid signatures not to include signatures that appear without a date or an address,
2 signatures that appear without a date written by the person actually signing, signatures that
3 appear on petitions that did not have a copy of the Ordinance attached, or signatures of persons
4 signing multiple times).

5 45. Writ of Mandate. The Court should issue a Writ of Mandate compelling the City
6 and City Clerk to do the following, as required by SMC 1.10.140

7 a. conduct a review of the sufficiency of the signatures in support of the
8 petition and determine whether the petition is supported by sufficient valid signatures (not
9 including signatures that appear without a date or an address, signatures that appear without a
10 date written by the person actually signing, signatures that appear on petitions that did not have a
11 copy of the Ordinance attached, or signatures of persons signing multiple times);

12 b. Conduct a review of the legality of the title, text, and content of the
13 proposed Ordinance and then determine whether the title, text, and content of the proposed
14 Ordinance are legal and sufficient;

15 c. Issue a Certificate of Sufficiency or Certificate of Insufficiency based on
16 this review; and

17 d. Convene the Petition Review Board to conduct a hearing to determine the
18 legality and sufficiency of the signatures supporting the petition and the title, text, and content of
19 the proposed Ordinance and to issue a Final Certificate of Sufficiency or Final Certificate of
20 Insufficiency.

21 46. Absence of an Otherwise Plain, Speedy, and Adequate Legal Remedy. Plaintiffs
22 have no plain, speedy, and adequate remedy by appeal or other legal action.
23

1 47. Plaintiff Alaska Airlines and others requested that the City Clerk conduct the
2 required review and make a determination as to the legality and sufficiency of the title and text
3 of the proposed Ordinance. The Plaintiffs and others requested the City of SeaTac to convene
4 a Petition Review Board before taking any further action with regard to the Ordinance. Alaska
5 Airlines and others also requested that the City Clerk review the sufficiency of the submitted
6 signatures. The City has thus far not honored these requests.

7 48. SMC 1.10.210 requires Plaintiffs to apply to this court for the aforementioned
8 writs, and RCW 7.16 gives this court the authority to issue the requested writs. If the requested
9 writs are not granted, the proposed Ordinance will be placed on the ballot without a
10 determination by the City Clerk that the title and text of the proposed Ordinance is legal and
11 without the petition initiating it having been validly signed by the required number of
12 registered voters of the City. No remedy at law would provide any relief, and equitable relief
13 in the form of a permanent injunction may not be available or available quickly enough to
14 provide relief before the proposed ordinance is forwarded to King County for inclusion on the
15 November 5, 2013, ballot.

16 49. Costs and Fees. The Court should award Plaintiffs' costs of suit, attorneys' fees,
17 and such other additional relief as the court may deem appropriate pursuant to RCW 7.16.260.

18 **V. PART TWO: COMPLAINT FOR DECLARATORY JUDGMENT AND A WRIT**
19 **OF PROHIBITION OR INJUNCTION**

20 50. In this Part Two, Plaintiffs seek a Declaratory Judgment that the proposed
21 Ordinance exceeds SeaTac's initiative power and a Writ of Prohibition or Injunction to prevent
22 the City and City Clerk from taking any action to place the invalid initiative on a ballot for an
23 election.

1 **A. Allegations**

2 51. State Law Authorizes Local Initiatives. Non-charter code cities such as SeaTac
3 “have all powers possible for a city or town to have under the Constitution of the state, and not
4 specifically denied to code cities by law.” RCW 35.11.020. A state statute authorizes cities to
5 provide for “direct legislation by the people through the initiative and referendum upon any
6 matter within the scope of the powers, functions, or duties of the city.” RCW 35.22.200.
7 RCW 35A.11.080 – RCW 35A.11.100 expressly authorizes non-charter code cities power to
8 adopt initiative powers.

9 52. SeaTac’s Municipal Code Authorizes Local Initiatives, Subject To State Law. In
10 June 1990, the City of SeaTac City Council adopted Ordinance 90-1042 establishing initiative
11 and referendum power for the City. Ordinance 90-1042 became codified as SeaTac Municipal
12 Code Chapter 1.10. Section 1.10.040 of the SeaTac Municipal Code (“SMC”) grants the
13 voters of the City of SeaTac the powers of initiative and referendum subject to the limitations
14 of State law, the general law, and the City’s initiative and referendum procedure.

15 53. Local Initiatives Are Limited In Permissible Scope. Cities have no authority to
16 adopt by initiative any Ordinance that exceeds the City’s authority to legislate. For example,
17 cities may not adopt initiatives that purport to create local laws conflicting with the United
18 States or Washington constitutions or that conflict with other state or federal laws. Similarly,
19 cities may not adopt initiatives involving powers delegated by the Washington legislature to a
20 city council or other local board, rather than the city itself. In addition, cities may not adopt
21 initiatives that are administrative, rather than legislative, in nature.

22 54. Invalid Initiatives Should Not Appear On The Ballot. Initiatives that exceed the
23 scope of the initiative power of a city in any manner are invalid and should not be placed on
 the ballot.

1 55. The Ordinance Exceeds The Initiative Power of the City of SeaTac. The
2 proposed SeaTac Ordinance exceeds the initiative power of the City of SeaTac because the
3 City does not have the authority to enact laws via initiative that violate the “subject in title” and
4 “single subject” rules; that are administrative in nature rather than legislative; or that conflict
5 with or are preempted by federal or state law.

6 56. The Ordinance Violates The “Subject in Title” Rule. The Ordinance exceeds the
7 initiative power of the City of SeaTac because the City does not have the legislative authority
8 to enact a law that violates the “subject in the title” rule. The “subject in the title” rule requires
9 that the subject of the measure must be expressed in its title. RCW 35A.12.130; SMC
10 1.10.080; *see also* Wash. Const. Art. II, Sec.19. “The purpose of this provision is to ensure
11 legislators and the public are on notice as to what the contents of the bill are. ... This
12 requirement has particular importance in the context of initiatives since voters will often make
13 their decision based on the title of the act alone, without ever reading the body of it. A title
14 complies with this requirement if it gives notice to voters which would lead to an inquiry into
15 the body of the act or indicates the scope and purpose of the law to an inquiring mind.”
16 *Citizens For Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639 (2003). The title of the proposed
17 Ordinance is “Ordinance Setting Minimum Employment Standards For Hospitality And
18 Transportation Industry Employers.” This title does not give sufficient notice to voters as to
19 the true contents of the proposed Ordinance.

20 57. The Ordinance Violates the Single Subject Rule. The Ordinance exceeds the
21 initiative power of the City of SeaTac because the City does not have the legislative authority
22 to enact a law that violates the requirement that an ordinance contain only one subject which
23 must be clearly expressed in the title. RCW 35A.12.130; SMC 1.10.080; *see also* Wash.

1 Const. Art. II, Sec. 19. The Ordinance exceeds the initiative power because the Ordinance
2 addresses at least seven, if not more, distinct and discreet subjects. The several subjects
3 contained in the Ordinance do not have “rational unity” as required by state law. In fact, the
4 many subjects of the Ordinance are typically addressed in separate legislation and enforced by
5 separate regulatory agencies, including some in state government and some in the federal
6 government.

7 58. The Ordinance Involves Administrative Matters. To be valid, a measure proposed
8 by initiative must be legislative (and not administrative) and within the municipality’s power to
9 act. An act is considered administrative if it is temporary and special, rather than permanent
10 and general. The wage rate revisions and reporting requirements in § 7.45.050 (B)-(D) and the
11 requirement of the City Manager to formally request consent in Section 7.45.110 are
12 administrative and not legislative in nature.

13 59. The Ordinance Conflicts with State Law Because it Purports to Eliminate The
14 Standing Requirement For Proceedings in State Court. The Ordinance exceeds SeaTac’s
15 initiative power because it unconstitutionally does away with Washington’s requirements for
16 standing to sue and purports to change state law regarding standing by allowing “any person”
17 (broadly defined to include individuals, partnerships, trusts, associations “or any other legal or
18 commercial entity, whether domestic or foreign”) “claiming a violation of this chapter” to
19 “bring an action” to enforce it, regardless of whether the person or entity was actually harmed
20 or threatened with harm.

21 60. Provisions of the Ordinance Conflict With Or Are Preempted By Federal Labor
22 Law. Plaintiff Alaska Airlines is a carrier by air covered by the Railway Labor Act, 45 U.S.C §§
23 151-188 (“RLA”), and employs approximately 8000 employees covered by collective bargaining

1 agreements with multiple labor unions negotiated under the RLA. Numerous vendors and
2 contractors covered by the proposed Ordinance perform services at SeaTac Airport for Alaska
3 and other air carriers. Most of these vendors and contractors are also covered by the RLA.
4 Some of them are covered by the National Labor Relations Act, 29 U.S.C. §§ 151-169
5 (“NLRA”). Whether an employer is covered by the NLRA or the RLA is determined by the
6 National Mediation Board (“NMB”) and/or the National Labor Relations Board (“NLRB”).
7 These federal agencies have complete and exclusive jurisdiction to address and resolve
8 representation disputes. “That is to say, at least where representation disputes are concerned, the
9 National Mediation Board has been given complete jurisdiction under the Railway Labor Act,
10 which is coextensive with that of the National Labor Relations Board under the National Labor
11 Relations Act. The jurisdiction of both administrative bodies is exclusive, with no power in the
12 federal district courts to intrude.” *AMFA v. United Airlines*, 406 F. Supp. 494 at 506 (1976). Air
13 carriers who perform services for other air carriers or other third parties and who would, as a
14 result, be covered by the proposed Ordinance are covered by the RLA.

15 61. SeaTac does not have the authority to adopt by initiative any legislation that
16 conflicts with federal law or that purports to regulate aspects of labor-management relations
17 governed by federal labor law. Legislation that interferes with the economic weapons
18 available to labor and management in reaching agreements is pre-empted by the NLRA or the
19 RLA, as applicable, because of its interference with the bargaining process.

20 62. By way of example and without limitation, Section 7.45.090 of the proposed
21 Ordinance (“Prohibiting Retaliation Against Covered Workers For Exercising Their Lawful
22 Rights”) purports to make illegal any adverse action by an employer against an employee who
23 communicates with a union about alleged violations of the Ordinance. Section 7.45.100A

1 creates remedies for violations of the proposed Ordinance. The NLRA, regulates the rights of
2 employees to engage in protected concerted activity, such as communicating with each other or
3 with a union about wages, hours, and working conditions (all subjects of the Ordinance), and
4 an employer’s ability to respond to such conduct by its employees. The National Labor
5 Relations Board has exclusive jurisdiction to determine if there has been any unlawful
6 retaliation against employees for exercising such rights. Section 7.45.090 and .100A of the
7 Ordinance thus purport to provide a cause of action and remedies for conduct that arguably
8 constitutes an unfair labor practice under the NLRA. Employees covered by the RLA have
9 similar protections although the enforcement mechanisms differ. Such legislation (and any
10 action under the Ordinance to enforce it) is preempted by federal labor law.

11 63. The Ordinance also would impose obligations on “Predecessor Employers” and
12 “Successor Employers,” including with respect to notice to and retention of employees. By
13 regulating successorship and specifically imposing an obligation on a “successor” to hire
14 “retention employees,” the Ordinance requires that employers hire a particular worker or a
15 specific group of workers based on a group characteristic. Both the NLRA and RLA define,
16 and governs the obligations of, predecessor and successor employers and preempts regulations,
17 such as the Ordinance, that attempt to regulate market forces with regard to labor supply and
18 collective bargaining and in doing so, interfere with the free play of economic forces.

19 64. The Ordinance interferes with employee and employer rights by coercing
20 employers to recognize unions and enter into collective bargaining agreements and by coercing
21 employees into union membership. Among other things, the proposed Ordinance allows
22 employers to avoid the impermissible requirements imposed by the measure but only by
23 entering a “bona fide” collective bargaining agreement that waives the provisions of the

1 Ordinance in clear and unambiguous terms. Individual employees are not allowed to reach
2 agreements to waive the provisions. The Ordinance thus conflicts with or is preempted by
3 federal labor law because it interferes with employees' and employers' rights under Sections 7
4 and 8 of the NLRA and Section 2, Third, Fourth, and Seventh of the RLA. *See Metropolitan*
5 *Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 755, 105 S.Ct. 2380, 2397 (1985); *American*
6 *Train Dispatchers v. Denver & Rio Grande Western Railroad Co.*, 614 F. Supp. 543 (D.
7 Colorado 1985).

8 65. Section 7.45.060 of the proposed Ordinance would require the purchasers of
9 covered employers and successors to the agreements of covered employers to hire the
10 employees of the predecessor employer. This provision is inconsistent with and/or preempted
11 by both the NLRA and the RLA because it has the effect of forcing the new provider or
12 employer to become a successor employer for purposes of federal labor law, with the attendant
13 obligation to recognize and bargain with the union representing the predecessor employer's
14 employees.

15 66. In addition, Section 7.45.100 of the proposed Ordinance gives to King County
16 Superior Court the responsibility of determining whether there exists a bona fide collective
17 bargaining agreement and whether such an agreement contains a "clear and unambiguous"
18 waiver of the Ordinance's provisions. Thus, it conflicts with Section 301 of the NLRA, which
19 provides that only the NLRB or courts applying federal law have this authority, and under the
20 RLA, Congress has vested System Boards of Adjustment with the sole and exclusive
21 jurisdiction to construe and interpret collective bargaining agreements. The RLA creates "a
22 comprehensive framework for the resolution of labor disputes" arising out of the interpretation
23

1 of CBAs in these industries. *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 562
2 (1987).

3 67. The Ordinance Conflicts With The Airline Deregulation Act. The Ordinance
4 exceeds the initiative power of the City of SeaTac because Section 7.45.040(A) of the
5 Ordinance, requires payment of service charges directly to “Transportation Workers.” That term
6 is defined in the Ordinance to mean any nonmanagerial, nonsupervisory individual employed by
7 a “Transportation Employer,” which is defined to include to include a company operating
8 “curbside passenger check-in services; baggage check services, wheelchair escort services, [and]
9 baggage handling. . . .” And while Section 7.45.010(M) of the Ordinance excludes from its
10 definition of a covered Transportation Employer “a certified air carrier performing services for
11 itself,” it does not exempt certified air carriers when they perform the covered transportation
12 support services for other airlines, as is customary in the industry. Thus certified air carriers
13 would be covered by the proposed Ordinance, at least with respect to some of their operations.
14 Such regulation of air carriers and the services provided by air carriers is preempted by the
15 Airline Deregulation Act (“ADA”). *See* 49 U.S.C. § 41713(b)(1) (2006). The ADA contains an
16 express preemption clause: no state may “enact or enforce a law, regulation, or other provision
17 having the force and effect of law related to a *price*, route, or *service* of an air carrier. . . .” 49
18 U.S.C. §41713(b)(1) (2006) (emphasis added).

19 68. The Ordinance Violates The U.S. and Washington State Constitutions. The
20 Ordinance does not set general terms of employment or set minimum employment standards.
21 It exceeds SeaTac’s initiative power in part because it substantially impairs contract rights or
22 contractual relationships in violation of the Contract Clause of the U.S. and Constitution and
23 art. 1, sec. 23 of the State Constition. The Ordinance requires that employers retain “qualified

1 Retention employees” for up to three months following the assumption of a contract. The
2 Ordinance also increases labor costs by up to 68% and, in doing so, substantially impairs
3 employers’ contractual obligation with a separate municipal corporation, the Port of Seattle, to
4 offer “street pricing” to customers in the airport. Rather than set general terms and conditions
5 of employment or minimum employment standards, the successorship provision of the
6 Ordinance, in Section 7.45.060, require that an employer hire and retain specific employees
7 solely because that employer assumed a service contract, regardless of the needs of the
8 business. These provisions impose wholly unanticipated burdens and obligations on the parties
9 to those agreements.

10 69. Offending Provisions Are Not Severable. The Ordinance contains a severability
11 clause, but the provisions of the Ordinance that exceed the initiative power of the City of
12 SeaTac are vital to the Ordinance’s intended purposes. The Court cannot sever the offending
13 provisions of the Ordinance from the non-offending provisions without rendering the
14 Ordinance incapable of accomplishing the legislative purposes.

15 **B. Claims for Relief In Part Two**

16 70. In Part Two of this Application and Complaint, Plaintiffs seek a Declaratory
17 Judgment that the proposed Ordinance exceeds the initiative power of the City of SeaTac and a
18 Writ of Prohibition or an injunction prohibiting the City and the City Clerk from taking any
19 further action to forward the proposed ordinance to the City Council or to King County or
20 taking any other action to place the measure on the ballot for the November 2013 election.

21 **1. Declaratory Judgment**

22 71. Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 et seq., this
23 Court may declare the validity of a proposed initiative.

1 72. The matter is ripe for declaratory relief because a dispute exists as to the validity
2 of the Ordinance.

3 73. A declaratory judgment action is proper to determine whether the Ordinance
4 exceeds the initiative power of the City of SeaTac and thus whether it may be submitted to the
5 qualified electors in the November 2013 election.

6 74. The Court should enter a judgment that the Ordinance exceeds the initiative
7 power of the City of SeaTac for the reasons set out above, as well as such other and further
8 relief as may follow from the entry of such a declaratory judgment.

9 **2. Writ of Prohibition**

10 75. Under RCW 7.16.290, this Court has the authority to issue a Writ of Prohibition
11 to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings
12 are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

13 76. As explained above, the City of SeaTac has no authority or jurisdiction to present
14 for possible adoption by voters a proposed Ordinance that exceeds the City's initiative power.

15 77. Because the proposed Ordinance exceeds the City's power of initiative and
16 because there is not a plain, speedy, and adequate remedy in the ordinary course of law, the
17 Court should issue a Writ of Prohibition prohibiting the City of SeaTac and the City Clerk
18 from taking any further steps to place the proposed Ordinance before the City Council for
19 action or any other steps to place the proposed Ordinance on the November 5, 2013 ballot.

20 **3. Injunction**

21 78. Pursuant to RCW 7.40 *et seq.* the Court has the power to grant injunctive relief.
22 The Court may grant an injunction at the time the action is commenced or at any time
23 afterwards.

1 79. The Ordinance has been deemed sufficient by the City Clerk to be presented to
2 the City Council and/or placed on the November 2013 ballot.

3 80. Only a valid initiative may be placed on a ballot for a local election. An initiative
4 that exceeds the power of the municipality is not a valid initiative as a matter of Washington
5 law and may not be placed on an election ballot.

6 81. For the reasons described in the preceding paragraphs of this complaint, Plaintiffs
7 have a well-grounded fear of the immediate invasion of their rights should the Ordinance be
8 presented to the City Council and/or placed on the November 2013 ballot. Additionally, the
9 Ordinance seeks to alter protections afforded by the United States and Washington
10 constitutions, as well as state and federal law. If enacted by the City of SeaTac, Plaintiffs
11 would be subject to the time and cost of pursuing post-election litigation. Plaintiffs will suffer
12 actual and substantial injuries if an injunction is not entered preventing the measures from
13 appearing on the ballot.

14 82. A preliminary and permanent injunction precluding presentation of the Ordinance
15 to the City Council and/or placement of the Ordinance on the November 5, 2013, ballot is also
16 proper (1) because the presence of invalid initiatives steals attention, time, and money from
17 other valid propositions on the same ballot; (2) to avoid the cost of placing before the voters
18 measures that would be unenforceable if enacted; (3) to avoid the public confusion that would
19 otherwise arise if the Initiatives are enacted and then later found to be invalid; (4) to eliminate
20 potential negative impacts the Ordinance may have on the City of SeaTac's economic
21 development efforts between now and the November 5, 2013 election; and (5) protect the
22 taxpayers of the City of SeaTac and King County from having to pay for multiple lawsuits
23 likely to arise post-election as the result of the enactment of an unlawful ordinance.

1 3. For issuance of a Writ of Mandate compelling the City and City Clerk to do the
2 following, as required by SMC 1.10.140, prior to taking any further action on the petition and
3 proposed Ordinance:

4 a. Conduct a review of the sufficiency of the signatures in support of the
5 petition and determine whether the petition is supported by sufficient valid signatures (not
6 including signatures that appear without a date or an address, signatures that appear without a
7 date written by the person actually signing, signatures that appear on petitions that did not have a
8 copy of the Ordinance attached, or signatures of persons signing multiple times);

9 b. Conduct a substantive review of the legality of the title, text, and content
10 of the proposed Ordinance and then determine whether the title, text, and content of the proposed
11 Ordinance are legal and sufficient;

12 c. Issue a Certificate of Sufficiency or a Certificate of Insufficiency based on
13 these reviews; and

14 d. Convene the Petition Review Board to (a) conduct a hearing to determine
15 the legality and sufficiency of the signatures supporting the Petition and the legality and
16 sufficiency of the title, text, and content of the proposed Ordinance and (b) issue a Final
17 Certificate of Sufficiency or a Final Certificate of Insufficiency.

18 **Part Two:**

19 4. For a judgment declaring that the Ordinance is beyond the scope of the initiative
20 power of the City of SeaTac, as well as such other and further relief as may follow from the entry
21 of such a declaratory judgment;

22 5. For a Writ of Prohibition prohibiting the City of SeaTac and the City Clerk from
23 taking any further steps to place the proposed Ordinance before the City Council for action or

1 any other steps to forward the proposed Ordinance to King County for placement on a ballot for
2 any election.

3 6. For a permanent injunction prohibiting the City of SeaTac and the City Clerk
4 from taking any further steps to place the proposed Ordinance before the City Council for action
5 or any other steps to forward the proposed Ordinance to King County for placement on a ballot
6 for any election;

7 7. For judgment against the City for Plaintiffs' costs and attorneys' fees pursuant to
8 RCW 7.16.260; and

9 8. For such other relief that the Court deems appropriate.

10 DATED this 8th day of July, 2013.

11 Davis Wright Tremaine LLP
12 Attorneys for Alaska Airlines, Inc. and Washington
13 Restaurant Association

14 By s/Harry J. F. Korrell
15 Harry J. F. Korrell, WSBA #23173

16 Pacific Alliance Law, PLLC
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18
19 By s/Cecilia Cordova via approval
20 Cecilia Cordova, WSBA #30095