Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **PLAINTIFFS' MOTION FOR A LIMITED PRELIMINARY INJUNCTION** **(ORAL ARGUMENT REQUESTED)** **(NOTE ON MOTION CALENDAR: SEPTEMBER 5, 2014 OR DATE TO BE SET BY THE COURT)**

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TABLE OF CONTENTS

BANCROFT PLLC
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TABLE OF AUTHORITIES

Cases

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Pursuant to LCR 7 and this Court's Order (Dkt. # 17), Plaintiffs hereby move for a limited preliminary injunction as to those provisions of Seattle City Ordinance No. 124490, *see* Ex. 1, that discriminate against small franchise businesses.[1]

I. INTRODUCTION

Seattle's new minimum wage ordinance is the first in the Nation to raise the minimum wage to $15 per hour (and beyond). Debates about the wisdom of that historic wage increase itself implicate questions of policy, but the unprecedented and discriminatory manner in which Seattle decided to implement that wage hike implicates serious constitutional concerns. Seattle is not only the first city to raise the minimum wage to $15 per hour, but also the first to treat small employers differently from large employers *and* treat small franchise businesses differently from all other small businesses for these purposes. This discriminatory treatment of a business model typified by involvement in interstate commerce, the use of federally-protected trademarks and particular forms of protected speech and association is not just novel, but unconstitutional. And the ordinance exacerbates those problems with further discrimination among businesses in ways forbidden by ERISA. Somewhere in its deliberations about whether to raise the minimum wage and whether to do so uniformly among businesses, Seattle took a wrong turn and made a decision to single out small franchise businesses for uniquely unfavorable treatment and to favor local businesses. That discriminatory decision crossed the constitutional line.

Under the ordinance, the $15 per hour minimum wage is phased in for large employers (those with more than 500 employees) over a mere three years. For small employers (those with 500 or fewer employees), Seattle recognized the need for a longer transition period and provided

[1] All exhibits cited herein appear as exhibits to the Groesbeck Declaration.

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a seven-year phase-in period. But after drawing that line, Seattle then reversed field and singled out small franchise businesses for discriminatory treatment with a special—and especially damaging—rule: any franchise business, no matter how small, is deemed a "large employer" if all of the separately owned businesses operating under the franchisor's brand or trademark across the country collectively employ more than 500 employees. In other words, if a small Seattle franchise business has just one employee, but the interstate franchise network (which is defined in terms of its common use of federally-protected trademarks and constitutionally-protected speech) with which that business is associated collectively employs more than 500 employees, that small franchise business is treated the same as a Seattle business that itself employs over 500 employees.

The ordinance's unprecedented discrimination against small franchise businesses suffers from several fatal flaws. By treating two otherwise identical employers differently based solely on the fact that one is affiliated with an interstate franchise, Seattle violates the Commerce Clause. Indeed, Seattle's discrimination against small franchisees is so contrary to the ordinance's own recognition of the need to treat small and large businesses differently that it violates the Equal Protection Clause of the Fourteenth Amendment. Seattle, in identifying which small businesses will be singled out for uniquely unfavorable treatment, defines the disfavored class in terms of their use of federally-protected trademarks and constitutionally-protected speech. That punishment for exercising federal property rights and protected speech cannot be squared with the Supremacy Clause or the First Amendment. And the details of Seattle's discriminatory regime create still more problems. Not content to discriminate against small franchise businesses, Seattle also favored certain large businesses that offered federal health plans favored by Seattle. That not only doubles down on the discrimination against small franchise businesses—only truly large businesses offer the plans that qualify for more favorable treatment—but this meddling in federal

health care offerings is also preempted by ERISA. Finally, Seattle's discrimination runs afoul of the Washington Constitution.

In sum, while there is a healthy policy debate about raising the minimum wage, the decision to impose a uniform minimum wage is one for policymakers. But Seattle's decision to discriminate against small businesses based on their affiliation with interstate commerce, use of federally-protected trademarks and constitutionally-protected speech is a different matter entirely. That decision was not a permissible policy choice for policymakers, but an unconstitutional wrong turn.

Because of these glaring problems, Plaintiffs are exceedingly likely to prevail on the merits, and—at an absolute minimum—have raised serious questions about the legality of the ordinance's unjustifiable and significantly adverse treatment of small franchise businesses. As a result, immediate injunctive relief is imperative, especially given the limited scope of the relief requested. Plaintiffs are not asking this Court to preliminarily enjoin the entire ordinance. Instead, Plaintiffs merely seek to enjoin those provisions of the ordinance that discriminate against small franchise businesses. Under Plaintiffs' proposed preliminary injunction, small franchise businesses would pay the same minimum wage as other small businesses; the minimum wage for small franchise businesses would go up on April 1, 2015, just the same as for other small businesses. In the absence of such an injunction, small franchise businesses will suffer imminent and irreparable injury. The violation of constitutional rights is, by definition, irreparable injury. Beyond that, the owners of small franchise businesses, including the Individual Plaintiffs in this case, will be placed at a severe competitive disadvantage which will result in a loss of customers and consumer goodwill, and may even force some of them to cease operation altogether. And the balance of hardships and public interest clearly support granting the limited injunctive relief requested.

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II. BACKGROUND

A. The Franchise Business Model and the Plaintiffs

The franchise model refers to the relationship between franchisors and franchisees. Franchisors license their brands and methods of doing business to franchisees. As licensees, franchisees generally pay a licensing fee or royalties for using the franchisor's brand (which is developed through constitutionally-protected commercial speech) and intellectual property (including federally-protected trademarks). While franchisors share a common brand with their franchisees, franchisors are not the owners of their franchisees' independent businesses. Franchisors and franchisees are separate business entities. *See* Reynolds Decl. ¶ 28.

Small franchise businesses are like other small businesses. Each franchisee is an independently owned and operated business. Franchisees manage all of the day-to-day aspects of their business, including making their own human resource decisions on which and how many workers to hire, and how much they can pay their workers—like any other small business owner. Franchisees independently invest in and pay the operating costs of their businesses, including rent, wages, taxes, and debt. No other party shares these obligations. *See* Reynolds Decl. ¶¶ 25-26.

The International Franchise Association, Inc. ("IFA") is an organization of franchisors and franchisees. The IFA has both franchisor and franchisee members in Seattle. *See* Reynolds Decl. ¶¶ 22-24. The Individual Plaintiffs own and operate small franchise businesses that are classified as "large employers" by the ordinance. *See* Stempler, Lyons, and Oh Declarations.

B. Legislative History of the Seattle Minimum Wage Ordinance

In December 2013, then Mayor-elect Edward Murray formed an advisory committee to advise him on raising the minimum wage in Seattle. This committee was known as the Income Inequality Advisory Committee ("IIAC"). The IIAC had 24 members. It was co-chaired by David

Rolf, the president of local 775 of the Service Employees International Union ("SEIU").

According to the recitals in the ordinance, the IIAC recommended a $15 per hour minimum wage with a slower phase-in for small employers compared to large employers. *See* Ordinance § 1(9) ("a benchmark of 500 employees is appropriate as distinguishing between larger and smaller employers in recognition that smaller businesses and not-for-profits would face particular challenges in implementing a higher minimum wage"). The IIAC as a body did not recommend that small franchise businesses be deemed large employers. The IIAC as a body did not draft the Mayor's bill, which defined small franchise businesses as large employers and subjected them to the accelerated phase-in of the $15 per hour minimum wage. The IIAC as a body never recommended discrimination against small franchise businesses. However, certain members of the IIAC knew why the Mayor's bill introduced this discrimination.

Nick Hanauer was a member of the IIAC. On May 3, 2014, he emailed Tim Burgess, the President of the City Council, explaining that the Mayor's bill treated small franchise businesses as large employers to protect local businesses from competition from national businesses:

> I am well aware that the compromise we fashioned classified most franchise owners as **Large**. This was our intent and I believe that there were very good reasons for this. … The truth is that franchises like subway and McDonalds really are not very good for our local economy. They are economically extractive, civically corrosive and culturally dilutive. … To be clear, the net amount of food people in Seattle will consume will not change if we have fewer franchises. What will change is what they consume and from whom. A city dominated by independent, locally owned, unique sandwich and hamburger restaurants will be more economically, civically and culturally rich than one dominated by extractive national chains. [Ex. 2.]

Robert Feldstein and Brian Surratt serve on the Mayor's staff. On May 5, 2014, they discussed Mr. Hanauer's email. Mr. Feldstein emailed Mr. Surratt: "If we lose franchises in Seattle, I won't be sad – for all the reasons [Hanauer said]. But are their [*sic*] ways for the cost to be born not on those franchise owners? Are they simply going to be a casualty of this transition?"

Ex. 3. The answer to that last question turned out to be yes.

David Meinert was an IIAC member. During the IIAC process, he and Mr. Rolf, the IIAC co-chair and SEIU head, discussed the possibility that the Mayor's bill would treat small franchise business as large employers. Mr. Rolf told Mr. Meinert several times that the purpose behind treating small franchise businesses as large employers under the minimum wage law was "to break the franchise model" and enable unions to organize employees at such businesses. Meinert Decl. ¶ 4. Mr. Meinert later attended a meeting at which Chris Gregorich, the Mayor's Chief of Staff, assured him that the Mayor's minimum wage bill would *not* treat small franchise businesses as large employers. Mr. Gregorich stated that "that would be morally wrong." *Id*. ¶¶ 5-6.

On May 5, 2014, after the Mayor's plan to discriminate against franchise businesses had circulated among IIAC members, Mr. Meinert sent two emails to Mr. Surratt and Mr. Feldstein. Mr. Meinert wrote: "Hey you guys, I'd like to meet. The more I dig into what I 'agreed' to the more I feel we were obviously snowed by Rolf." Ex. 4. "This proposal looks more and more like a bunch of ideas cobbled together by SEIU to organize rather than to raise wages in the best way for everyone. From breaking franchise agreements to outside 'education' of workers funded by the city, to getting rid of tips to lack of training wage." Ex. 4. "I hope you realize how much Rolf has played all of us, including you guys." Ex. 4. Later in May, after the Mayor's bill was released, Mr. Meinert wrote on his Facebook page: "The final ordinance reflects goals of Labor leaders that go far beyond raising the minimum wage. They include breaking the franchise model to open up franchise agreements to allow for collective bargaining …." Ex. 5.

On May 15, 2014, the Mayor formally transmitted his bill to the City Council. *See* Ex. 1 last page. On May 19, the IFA sent a letter to the Mayor and Council expressing its "significant concerns" regarding the proposed legislation. Ex. 6. On May 27, Michael Seid, an IFA board

member, wrote to the Mayor and the City Council. He stated that the bill "discriminates against a large class of small independent business owners merely because they have invested in opening their businesses under a brand name." Ex. 7 at 2. On May 31, Mr. Seid against wrote to the Mayor and the City Council to protest "the discrimination against a class of small business owners simply because of their branded affiliation with franchisors, and for no other reason." Ex. 8 at 1.

On May 30, 2104, representatives of the IFA, McDonald's Corporation, and Yum! Brands, Inc. met with the Mayor in his office to discuss their concerns about his bill, including the provisions deeming small franchise businesses to be large employers. The Mayor stated that the provisions were necessary to secure the approval of the SEIU. *See* Heyl Decl. ¶ 8. As the meeting neared its end, he said "you won't hear me slam quick service restaurants or the franchise model." *Id*. ¶ 9. Less than two weeks later, he publicly described the franchise model as a "problem."

Also on May 30, the *Seattle Times* published an editorial urging the City Council to "strike the definition of franchises" from the bill. The *Times* observed that "these businesses are not arms of corporations. Franchises have their own tax ID numbers and payroll—they are independent business units separate from the franchiser." The bill, the *Times* said, "effectively discriminates against a business model—franchises—by giving non-franchises a slower phase-in." Ex. 9.

Nick Hanauer, the same IIAC member who had explained the protectionist motive behind the bill, reacted to the *Times* editorial by sending an email to all members of the City Council and Messrs. Rolf, Feldstein, and Surratt. Mr. Hanauer wrote: "The hard truth is, that these national franchises like McDonalds, or Burger King or KFC, or Subway, simply are not beneficial to our city. … [O]ur city has no obligation to continue policies that so obviously advantage them and disadvantage the local businesses that benefit our city and it's [*sic*] citizens more." Ex. 10.

Kshama Sawant is a Member of the City Council and the leading force on that body for a

$15 minimum wage. At a public hearing on May 22, 2014, she stated that "to be a franchisee, you have to be very, very wealthy. Just a small business person of color from Rainier Beach is not going to be able to afford to open a franchise outlet." Ex. 11 at 3. On May 23, she wrote on her official website that "It's clear that the current franchise model is rigged against workers." Ex. 12.

On June 2, 2014, the City Council passed the bill. Recognizing that businesses large and small will need months to prepare for the minimum wage hikes, the Council defeated a proposed amendment that would have raised the minimum wage to $15 per hour for all employers on January 1, 2015. *See* Ex. 13 at 5-6. It also defeated a proposed amendment that would have started to phase in the minimum wage hikes on January 1, 2015, instead of April 1, 2015. *Id*. at 5.

On June 3, 2014, the Mayor signed the bill and it became City Ordinance No. 124490.

C. The Ordinance's Arbitrary Discrimination Against Small Franchisees

The ordinance arbitrarily and irrationally discriminates against small franchise businesses. It phases in a $15 per hour minimum wage on various schedules. The wage hikes begin on April 1, 2015. The ordinance recognizes the special challenges faced by small employers by phasing in the wage increases faster for "large" employers than for "small" employers. *See* Ordinance § 1(9) ("a benchmark of 500 employees is appropriate in distinguishing between larger and smaller employees in recognition that smaller businesses and not-for-profits would face particular challenges in implementing a higher minimum wage"). But after recognizing the special needs of small employers, the ordinance then by fiat deems small franchisees to be large employers.

The ordinance defines a "Schedule 1 Employer" as "all employers that employ more than 500 employees in the United States, regardless of where those employees are employed in the United States." *Id*. § 2(T). Significantly, the definition of a "Schedule 1 Employer" also includes "all franchisees associated with a franchisor or network of franchises with franchisees that employ

more than 500 employees in aggregate in the United States." *Id.* The ordinance defines a "Schedule 2 Employer" as "all employers that employ 500 or fewer employees in the United States regardless of where those employees are employed in the United States." *Id.* § 2(U). It also states that "Schedule 2 employers do not include franchisees associated with a franchisor or network of franchises with franchisees that employ more than 500 employees in aggregate in the United States." *Id.* Thus, it makes doubly sure that a small, independently owned and operated franchisee, no matter how few workers it actually employs, is deemed a "Schedule 1"—*i.e.*, large—employer.

Although the ordinance subjects franchisees to a categorical rule that all employees, including those of other franchisees in other States will be aggregated, it provides a general standard to govern when the employees of separate non-franchisee businesses will be aggregated. "[S]eparate entities" will be considered a "single employer" if they are an "integrated enterprise." *Id.* § 3(B). But the ordinance expressly excludes franchise businesses from these provisions.

The ordinance states that for "purposes of determining whether a non-franchisee employer is a Schedule 1 employer or a Schedule 2 employer, separate entities that form an integrated enterprise shall be considered a single employer." *Id.* "Separate entities will be considered an integrated enterprise and a single employer under this Chapter where a separate entity controls the operation of another entity." *Id.* The ordinance requires consideration of the "[d]egree of interrelation between the operations of multiple entities," "[d]egree to which the entities share common management," "[c]entralized control of labor relations," and "[d]egree of common ownership or financial control over the entities." *Id.* It also adopts a presumption that "separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes" of the integrated enterprise determination so long as "(1) the separate legal entities operate substantially in separate physical

locations from one another, and (2) each separate legal entity has partially different ultimate ownership." *Id*. The ordinance does not, however, apply the integrated enterprise test or the presumption of separateness to franchise businesses. The test and presumption apply only to "a non-franchisee employer." *Id*. Thus the ordinance makes triply sure that even the smallest and most independent franchise businesses will be treated as a large, Schedule 1 employer.

Under the ordinance, the all-important definitions of "franchisor" and "franchisee" turn on whether one offers or uses a licensed "trademark, service mark, trade name, advertising, or other commercial symbol." *Id*. § 2(I). It defines a "Franchise" as a written agreement by which

> 1. A person is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
> 2. The operation of the business in substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol;
> 3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

Id. The ordinance defines a "Franchisee" as "a person to whom a franchise is offered or granted," *id*. § 2(J), and a "Franchisor" as "a person who grants a franchise to another person," *id*. § 2(K).

The ordinance phases in the $15 minimum wage much faster for franchisees and other Schedule 1 employers than for Schedule 2 employers. *Id*. §§ 4(A), 5(A). As of April 1, 2015, Schedule 1 employers must pay $11 per hour. *Id*. § 4(A). On January 1, 2016, the minimum wage for such employers rises to $13. *Id.* On January 1, 2017, the $15 minimum wage takes effect for Schedule 1 employers. *Id.* On January 1, 2018, and annually thereafter the minimum wage for such employers "increase[s] annually on a percentage basis to reflect the rate of inflation." *Id.*

In contrast to Schedule 1, the minimum wage increases for Schedule 2 employers are phased in more slowly on the following schedule: $10 in 2015, $10.50 in 2016, $11 in 2017, $11.50 in 2018, $12 in 2019, $13.50 in 2020, and $15 in 2021. *Id*. § 5(A). In those years, Schedule

2 employees must pay "the lower of (a) the applicable hourly minimum wage for Schedule 1 employers or (b) the hourly minimum wage shown in the [above] schedule." *Id*. As of January 1, 2025, the minimum wage for all employers "shall equal the hourly minimum wage applicable to Schedule 1 employers." *Id*. Thus, franchisees are not guaranteed equal treatment until 2025.

Small franchisees thus will pay a much higher minimum wage than similarly situated non-franchise businesses for the six years from April 1, 2015, to the end of 2021. Franchisees may also pay a higher minimum wage for four more years—from January 1, 2021 to the end of 2024—depending on the inflation rate. *Id*. Only in 2025 will the discrimination against small franchisees have to stop. *Id*. § 5(A). In this six to 10 year period, the ordinance will put small franchisees at a competitive disadvantage with greater labor costs as to similarly situated Schedule 2 employers.

D. Public Comments of City Officials Regarding Plaintiffs' Legal Challenge

On June 2, 2014, the IFA announced its challenge to the ordinance. *See* Ex. 14. That same day, Councilmember Sawant tweeted from her official Twitter account that franchisees should blame their franchisors, not the City, for the hardship the ordinance causes: "Franchise owners: enough with the blame game! Organize, go to CorpHQ & renegotiate your rents." Ex. 15.

Plaintiffs filed this action on June 11, 2014. In response, the Mayor released a public statement. He justified the ordinance's discrimination against franchises in expressly protectionist terms. He pointed to a franchisee's relationship with "a corporate national entity" as the reason for favoring "local" businesses. He also stated that "[t]here is a problem in the franchise business model ...." Echoing the Sawant tweet, the Mayor said that the "economic strain" of the faster phase-in of the minimum wage for franchises "is a discussion franchise owners should be having with their corporate parents." Ex. 16. On June 16, in a televised interview, he repeated his view the franchise model is a "problem": "those franchise owners should focus on the corporations and

their business model, because I think their business model needs to get a change, not our minimum wage proposal. ... We believe the problem is with the corporate model ...." Ex. 17 at 4.

III. STANDARD OF REVIEW

A plaintiff is entitled to a preliminary injunction if (1) "he is likely to succeed on the merits," (2) he "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in his favor," and (4) an "injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under an alternative formulation, a preliminary injunction should be granted if there are "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff," there is "a likelihood of irreparable injury," and "the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). *Accord M.R. v. Dreyfus*, 697 F.3d 706, 720, 738 (9th Cir. 2012).

IV. ARGUMENT

A. Plaintiffs Are Highly Likely to Prevail on the Merits.

Seattle's ordinance blatantly discriminates against small franchise businesses in violation of numerous reinforcing constitutional prohibitions. While Seattle recognizes the need for small businesses to have a longer transition period than large employers, it denies small employers that longer phase-in period if they are affiliated with franchises. That discriminatory treatment is so arbitrary and contrary to the general thrust of the ordinance that it violates equal protection. But not only does the ordinance discriminate irrationally, it discriminates against certain small employers based on their ties to interstate commerce, their use of federally-protected trademarks, and their constitutionally-protected speech. Indeed, both the purpose and effect of the ordinance is to favor purely local employers over those affiliated with interstate franchise networks, in plain violation of the Commerce Clause. The ordinance further discriminates against small franchise

businesses by favoring certain large employers who choose the federal health plans that Seattle prefers. This not only exacerbates the discrimination—small franchise businesses are actually treated worse than some large non-franchise businesses—but violates the federal ERISA statute. And Washington law also forbids the ordinance's blatant denial of privileges and immunities to some corporations. In short, on multiple grounds, Plaintiffs are overwhelmingly likely to succeed in their challenge to this novel and discriminatory ordinance.

1. The Ordinance Impermissibly Discriminates Against Interstate Commerce.

Under the Commerce Clause, U.S. Const., art. I, § 8, cl. 3, "laws that discriminate against interstate commerce face 'a virtually *per se* rule of invalidity,'" *Granholm v. Heald*, 544 U.S. 460, 476 (2005). That is so whether the law is discriminatory on its face, in purpose, or in effect. *See Chem. Waste Mgmt., Inc. v. Hunt*, 504 U.S. 334, 344 n.6 (1992). For a law that discriminates against interstate commerce to pass muster, the defendant must carry the "extremely difficult burden" of showing that its law "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 581 (1997).

Seattle's ordinance unquestionably discriminates against interstate commerce. Small businesses operating in Seattle—even businesses with only a handful of employees—are treated more harshly simply because they have opted to affiliate themselves with out-of-state entities and interstate franchise networks. If Seattle had simply imposed a higher wage requirement on companies with out-of-state ties or those engaged in interstate commerce, the Commerce Clause violation would be undeniable. But the ordinance has the same discriminatory effect. Of the 623 franchises operating in Seattle, 600—or 96.3%—have out-of-state franchisors. Reynolds Decl. ¶ 17. And all of the 23 franchisees with in-state franchisors are affiliated with franchisees in other

states through the operation of their franchise networks. *Id.* For these small businesses, the penalty for affiliating with an interstate franchise network is severe. Small franchisees are required to pay their employees a higher minimum wage than their similarly situated competitors that lack the same interstate ties: as much as $1 more in 2015, $2.50 more in 2016, and $4 more in 2017.

This differential minimum wage requirement based solely on whether a small business affiliates with an interstate franchise network is tantamount to a tariff on interstate commerce. The law would be the same in substance from the view of the franchisee and the franchise network if, rather than mandating the payment of an additional $4 per employee-hour worked in 2017 in employee wages, it made franchisees pay a $4 tax per employee-hour worked. Requiring a small business to pay a tax based on its affiliations with out-of-state entities and interstate business networks is the "paradigmatic example of a law discriminating against interstate commerce." *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994). Tariffs and laws having "the same effect as a tariff" have "long been recognized as violative of the Commerce Clause." *Id.* at 193-194.

That the ordinance disadvantages franchisees through a minimum wage and not a direct tax is of no moment. "Commerce Clause jurisprudence is not so rigid as to be controlled by the form by which a State erects barriers to commerce." *Id.* at 201. The Commerce Clause "forbids discrimination, whether forthright or ingenious." *Best & Co. v. Maxwell*, 311 U.S. 454, 455 (1940). Repackaging a tax on interstate commerce and business affiliations as an increased and accelerated minimum wage requirement cannot salvage it. Nor does the fact that the tax is imposed on entities operating in Seattle based on their affiliations with interstate commerce, rather than directly on the out-of-state entities, alter the analysis. "For over 150 years," courts "have rightly concluded that the imposition of a differential burden on any part of the stream of commerce … is invalid." *W. Lynn Creamery*, 512 U.S. at 202. That is particularly true when the City's response

to adversely affected franchisees is to tell them "go to CorpHQ & renegotiate your rents." Ex. 15. The ordinance's disparate treatment of small businesses based on whether they have ties to an interstate franchise network and out-of-state businesses makes the law's treatment of Seattle franchisees *per se* invalid. The law clearly has a discriminatory effect, and it operates in practice little different from a law that simply forced companies engaged in interstate commerce to pay higher wages than local companies.

The ordinance is discriminatory in purpose as well as effect. "Preservation of local industry by protecting it from the rigors of interstate competition is the hallmark of the economic protectionism that the Commerce Clause prohibits." *W. Lynn Creamery*, 512 U.S. at 205. Here, the discrimination against small franchise businesses was prompted by a forbidden interest in protecting local enterprises. IIAC member Nick Hanauer, in his email to City Council President Burgess, made clear that one of the ordinance's aims was to create a "city dominated by independent, locally owned" retailers, and eliminate "franchises like subway and McDonalds" and other "national chains," which "are not very good for [the] local economy." Ex. 2. The purpose of denying small employer status to small franchise businesses, Mr. Hanauer explained, was to tilt the playing field away from "national franchises" and toward "local businesses [in] our city." Ex. 10. Mr. Feldstein of the Mayor's office likewise saw that the ordinance aims to make "franchises in Seattle" "a casualty of this transition." Ex. 3. The Mayor's own public statement on this lawsuit justified his law's discrimination against franchises in protectionist terms. He cited a franchisee's relationship with "a corporate national entity" as the reason for treating it less favorably than a "local" business. He openly attacked the "franchise business model"—a method of doing business through *interstate* franchise networks—as a "problem." Fully aware of the interstate consequences of the ordinance, the Mayor said that the "economic strain" from a faster phase-in of the minimum

wage for franchises "is a discussion franchise owners should be having with their corporate parents." Ex. 16. Councilmember Sawant likewise advised franchise owners to "Organize, go to CorpHQ & renegotiate your rents." Ex. 15.

Seattle has no prospect of justifying its blatantly discriminatory treatment of small business franchises, which is hardly necessary to further the ordinance's stated goals. Indeed, the adverse treatment of a subset of small businesses affirmatively contradicts the ordinance's broader goals and design in ways that strongly suggest an improper motive is afoot. According to the ordinance itself, the wage increase is meant to "promote the general welfare, health, and prosperity of Seattle" and "to respond to the challenge of rising income equality." Ordinance, Whereas Clauses 8, 12. Those are admirable goals, but they do not speak to the need to treat small businesses differently based on whether they choose to develop ties with an interstate franchise network. Indeed, the results that will flow from the ordinance's disparate treatment of franchisees are likely to critically undermine efforts to achieve these goals as the anticompetitive and uneven treatment of franchisees forces those businesses to cut their workforce or shut their doors. Fewer job opportunities or, worse yet, fewer employers, will only exacerbate current income disparity problems and decrease the overall welfare of the intended beneficiaries of the wage increase.

Relatedly, the ordinance itself recognizes that small employers need more time to adjust to the increased minimum wage and thus are extended a longer phase-in period. As the ordinance recognizes, "small businesses ... may have difficulty in accommodating the increased costs." *Id.* § 1(4). But the ordinance then goes on to define certain small businesses—those with ties to interstate franchise networks—as large businesses. In this respect, the ordinance is in no way tailored to achieve its aims of a more measured phase-in of the increased wage for small businesses. Small franchisees with only five or ten employees are in exactly the same position as

their similarly-situated non-franchised competitors when it comes to the "difficult[ies] in accommodating the increased costs" of Seattle's minimum wage. *Id*. Thus, the narrowly-tailored (not to mention obvious) way to ensure that all small businesses are given additional time to absorb the financial blow of the increased wage is to treat all small businesses alike.

2. The Ordinance Violates the Equal Protection Clause.

The "core concern of the Equal Protection Clause" is preventing "arbitrary classifications," *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008), which violate the Clause "under even [the] most deferential standard of review." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 83 (1988). *See Vill. of Willbrook v. Olech*, 528 U.S. 562, 564 (2000) (laws that "intentionally" treat "similarly situated" entities "differently" are invalid if "there is no rational basis for the difference in treatment"). The ordinance's treatment of small franchise businesses cannot withstand even minimal scrutiny. The application of the ordinance will clearly yield irrational and unsupportable results in two ways. First, in failing to treat like businesses alike, it will cause businesses that are identical in all material respects will pay their employees different minimum wages. For example, simply by virtue of their association with an interstate franchise network, the small businesses run by Plaintiffs Stempler and Lyons will be forced to pay a higher wage than their mirror-image competitors across the street. *See* Stempler Decl. ¶ 20; Lyons Decl. ¶ 17. Second, the ordinance treats businesses that bear no resemblance to one another as identical twins. Under the ordinance, the Lyons' business, which employs 22 individuals in Seattle, will be held to the same minimum wage standard as Seattle's largest employer—Boeing—which employs more than 70,000 people. Seattle may be able to force all businesses to raise their wages at the same rate to the same level, or to implement its wage experiment in phases based on actual employer size (as it does in other contexts). But it cannot consistent with equal protection create two categories that are impacted

by the wage increase in fundamentally different ways and then irrationally and arbitrarily define companies that belong in the more permissive category into the more stringent category.

Indeed, the ordinance's treatment of small franchisees is arbitrary and irrational on its face. The ordinance finds and declares that "a benchmark of 500 employees is appropriate in distinguishing between larger and smaller employers in recognition that smaller businesses … would face particular challenges in implementing a higher minimum wage." Ordinance § 1(9). But it then goes on to define small franchisees as "large" employers simply by virtue of their ties to interstate franchise networks. The ordinance's finding regarding the 500-employee benchmark and subsequent treatment of small franchised businesses are irreconcilable. There is simply no basis, let alone a rational one, for treating small franchisees and their similarly situated non-franchised competitors differently when it comes to the minimum wage those businesses must pay.

The ordinance's treatment of "integrated enterprises" only highlights the arbitrariness of its treatment of franchisees. The ordinance establishes a general rubric to "determin[e] whether a non-franchisee employer is a Schedule 1 employer or a Schedule 2 employer" based on the notion that two or more separate employers are sufficiently related that they can be treated as an "integrated enterprise" with their employees aggregated. *Id.* § 3(B). The ordinance requires consideration of the "[d]egree of interrelation between the operations of multiple entities," the "[d]egree to which the entities share common management," whether there is "[c]entralized control of labor relations," and the "[d]egree of common ownership or financial control over the entities." *Id.* The ordinance also adopts a presumption that "separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes" of ascertaining whether an employer is "large" or "small." *Id.* If applied to small franchise employers, this standard would preclude the treatment of separate

franchisees or individual franchisees and the national franchisor as integrated entities. In the case of franchises there is generally no common management, no centralized control of labor relations, and no common ownership or financial control. Likewise, the general presumption against aggregation would be fully applicable to small franchise employers. To be sure, the more general standards and presumptions for identify integrated entities are expressly inapplicable to franchisees, no matter how small or independent. But that underscores the irrationality. For an ordinance to adopt a general rule for identifying integrated entities and then adopt a bright-line rule that treats a subclass of entities that do not satisfy the general standard as categorically integrated underscores the irrational and arbitrary—indeed, punitive—nature of the ordinance.[2]

That the ordinance's discrimination against small franchise businesses runs directly counter to both the ordinance's general recognition that small businesses need more time and Seattle's own approach in comparable contexts strongly suggests not just the absence of a rational basis, but the presence of an improper motive. Discrimination that is irrational and arbitrary need not be inexplicable. But when the explanation is mere animus or a forbidden motive like local protectionism, that explanation does not save the ordinance.

Here, evidence of animus abounds. In a telling exchange between IIAC member Nick Hanauer and City Council President Tim Burgess, Mr. Hanauer explained that one of the aims of the ordinance was to decrease the number of franchises operating in Seattle. *See* Ex. 2 (the ordinance would force franchises "to change their practices and business models" and result in "fewer franchises"). Mr. Hanauer explained that eradicating franchises from the Seattle business

[2] The ordinance's discrimination against franchisees is irreconcilable with other Seattle laws that treat small franchise businesses like other small businesses, such as the City's sick leave law. *See* Seattle City Ordinance No. 123698 (Sept. 12, 2011). That law classifies employers as small (5-49 employees), medium (50-249) and large (250 or more). *Id.* § 2(T). Franchise status is not a factor.

landscape was desirable because franchises are "economically extractive, civically corrosive and culturally dilutive." *Id.* "The hard truth," Mr. Hanauer said in an email to the City Council, is that "these national franchises ... simply are not that beneficial to our city." Ex. 10.

IIAC member David Meinert's report on the ordinance's true purpose is even more stark: "The final ordinance reflects goals of Labor leaders that go far beyond raising the minimum wage. They include breaking the franchise model to open up franchise agreements to allow for collective bargaining." Ex. 5. *See also* Ex. 4. IIAC co-chair (and local SEIU head) David Rolf told Mr. Meinert several times that the goal was to "break the franchise model." Meinert Decl. ¶ 4. And the Mayor himself indicated in the May 30, 2014 meeting with the IFA that the discrimination against franchises was necessary to secure SEIU's approval. *See* Heyl Decl. ¶ 8.

The antipathy of the Mayor and Ms. Sawant toward franchises is also palpable. "There is a problem in the franchise business model," the Mayor said, which "needs to get a change." Ex. 16, Ex. 17 at 4. "It's clear that the current franchise model is rigged against workers," said Ms. Sawant. Ex. 12. Laws "motivated by animus" or that aim "to harm an unpopular group fail rational basis scrutiny." *Brown v. N.C. DMV*, 166 F.3d 698, 706-707 (4th Cir. 1999). Such laws lack "a legitimate government interest." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

3. The Ordinance Violates the First Amendment.

Plaintiffs' First Amendment challenge is likely to succeed because the ordinance discriminates against small franchises businesses while defining the disfavored class on the basis of protected speech and association. The ordinance plainly discriminates against small businesses defined as franchises, but that term is hardly self-defining. And what subjects a small employer to this unfavorable treatment is its decision to engage in certain kinds of speech and certain kinds of association. The resulting discrimination cannot be reconciled with the First Amendment.

The First Amendment protects both the freedom of speech and the related right of freedom of association. The freedom of speech prevents the government from penalizing speakers for engaging in protected speech, even in a commercial context. *See, e.g., Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002). The freedom of association includes the "right to associate with others in pursuit of ... economic ... ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). "Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group." *Id.*

The ordinance unconstitutionally burdens fundamental First Amendment rights by penalizing small Seattle businesses for associating with interstate franchise networks and out-of-state franchisors and by penalizing the speech of such franchisees and their franchisors. The ordinance expressly defines the disfavored class—franchises—based on speech and association protected by the First Amendment. To be considered a disfavored franchise, a small business must satisfy a three-prong test, and two of those prongs base disfavored treatment on First Amendment activity. A franchise is a business that operates "under a marketing plan prescribed or suggested in substantial part by a grantor or affiliate" and is "substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol." Ordinance § 2(I). Marketing, trademarks, and advertising all involve protected speech, and a franchisee's decision to associate itself with a franchisor's trademark or engage in coordinated marketing and advertising is protected by the First Amendment. Seattle is not free to penalize franchisees for engaging in that protected conduct, yet that is precisely what the ordinance does. It penalizes small franchisees with an accelerated phase-in of the minimum wage, and the resulting competitive disadvantage, based on their association with franchisors and their decision to engage in protected speech. The ordinance,

in effect, imposes a civil penalty for choosing to associate with certain businesses and trade names, which, "are a vital form of commercial speech" entitled to robust protection. *Friedman v. Rogers*, 440 U.S. 1, 22 n.3 (1979) (Blackmun, J., concurring in part and dissenting in part).

Due to this severe burden on First Amendment rights, the ordinance, to survive scrutiny, must be narrowly drawn to serve a compelling state interest, or at least burden no more protected activity than necessary. *See Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2984-85 (2010); *Turner Broadcasting Sys., Inc. v. Turner*, 512 U.S. 622, 658 (1994). The ordinance fails that test. Its treatment of small franchise businesses fails rational basis scrutiny; *a fortiori* it fails the more exacting First Amendment review. Moreover, Seattle lacks a compelling interest in burdening franchisee-franchisor association. Whatever interest it might have could be served by a regulation that does not expressly and substantially disadvantage franchisees as compared to their non-franchised competitors. Indeed, a substantially less restrictive alternative is present in the ordinance itself, which provides a generally applicable standard for determining when two separate companies can fairly have their employees aggregated for purposes of deciding whether the employer is large or small. There is no reason for a *per se* rule that punishes a company for engaging in coordinated marketing or associating with a common trademark.

To the extent some lesser form of scrutiny applies because the associations at issue are largely "commercial" in nature, Seattle would still need to show that its "targeted" adverse treatment of protected franchise relationships "directly advances a substantial governmental interest" and that the Ordinance "is drawn to achieve that interest." *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2667-68 (2011). Seattle cannot meet the test for restricting commercial First Amendment activity, as less restrictive alternatives are apparent on the face of the statute. If two separate entities have truly common ownership, there is an argument for aggregating employees.

See Ordinance § 3(B). But coordinated advertising and marketing are not even a rough proxy for thinking that the employees of two separately owned and controlled franchisees should have their employees aggregated. Using that protected activity as an inexact proxy for considerations that can be evaluated without infringing First Amendment values flunks any level of scrutiny.

4. The Ordinance Is Preempted by the Lanham Act.

Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, when a local law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," it is preempted. *Hillman v. Maretta*, 133 S. Ct. 1943, 1950 (2013) (quotation marks omitted). "Congress's intent to preempt may be explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Omnipoint Commc'ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 194 (9th Cir. 2013). The ordinance expressly discriminates against franchisees and franchisors who exercise their federally protected rights to obtain and utilize trademarks. A local ordinance disfavoring a class of employers defined in significant part by their use of a shared trademark frustrates the objectives of the Lanham Act and is preempted by the Act.

The Lanham Act "includes an unusual, and extraordinarily helpful, detailed statement of the statute's purposes." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1389 (2014) (quotation marks omitted). The Lanham Act "protect[s] registered marks used in ... commerce from interference by State, or territorial legislation." 15 U.S.C. § 1127. When a law conflicts with the "intent of Congress in enacting the Lanham Act," "then the state law" is "invalid" "under the Supremacy Clause." *Golden Door, Inc. v. Odisho*, 646 F.2d 347, 352 (9th Cir. 1980) (quotation marks omitted). *See Mister Donut of Am., Inc. v. Mr. Donut, Inc.*, 418 F.2d 838, 844 (9th Cir. 1969) ("The Lanham Act has pre-empted the field of trademark law and controls.").

The ordinance clearly "interfere[s]" with federally registered trademarks and frustrates the

purposes of the Lanham Act and is thus preempted. 15 U.S.C. § 1127. Under the ordinance, one of the critical attributes of a small business counted as a franchise is that "[t]he operation of its business is substantially associated with a trademark, service mark, [or] trade name … designating, owned by, or licensed by the grantor or its affiliate." Ordinance § 2(I). And there is no doubt that a small business deemed to be a franchise because it substantially associates with a trademark suffers dramatically negative consequences. The ordinance operates no differently from a $4 an hour tax on small businesses that associate with a federally protected trademark. Such a penalty on exercising a federally protected right directly interferes with a federally protected mark. The inability of localities to discriminate against or tax federally protected rights has been clear since the earliest days of the Republic. *See, e.g., McCulloch v. Maryland*, 17 U.S. 316 (1819).

It is no answer that the ordinance does not disadvantage every company that utilizes a trademark, but only a subset of companies that associate together to exploit a common trademark. The Lanham Act expressly makes trademarks subject to license and assignment. *See* 15 U.S.C. § 1060. Indeed, one of the underlying reasons for a trademark is to ensure that all products offered pursuant to a particular mark are of our uniform quality. *See Carris v. Marriott Int'l, Inc.*, 466 F.3d 558, 562 (7th Cir. 2006). The "right to control the quality" of the goods associated with a trademark is "[o]ne of the most valuable and important protections afforded by the Lanham Act." *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 618 (9th Cir. 1993) (quotation marks omitted). Thus, a law that discriminates against those who agree to offer products and services of uniformly high quality under a common mark strikes at the heart of the Lanham Act's purposes.

5. The Ordinance Is Preempted by ERISA.

Seattle was not content merely to discriminate against small franchise employers. The ordinance goes further and provides especially favorable treatment to certain (truly) large

employers who offered their employees a form of federal health care plan apparently favored by Seattle as a policy matter. This provision has two fatal flaws. First, this provision exacerbates the unlawful discrimination against small franchise employers. It is bad enough that the ordinance denies them the benefits extended to all other small employers, but it then adds insult to injury by granting certain large employers a more relaxed implementation schedule. Although this option is technically open to small business franchisees, as a practical matter truly small businesses will not be in a position to take advantage of the special treatment for employers who offer a federal gold or silver plan. Employers with fewer than 50 employees have no obligation to offer a plan at all. *See* 26 U.S.C. § 4980H(c)(2). Thus, not only will small franchise employers be treated the same as vastly larger employers, they will actually be treated worse than large employers that offer a federal gold or silver plan. Second, this provision suffers from a deeper flaw. Seattle has no business imposing its preferences concerning the choices among various federal health care plans. ERISA has an especially broad preemption clause, and the ordinance falls squarely within it.

"ERISA includes expansive pre-emption provisions, *see* ERISA § 514, 29 U.S.C. § 1144, which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a). "Congress used the words 'relate to' in § 514(a) in their broad sense." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983). "A law 'relates to' an employee benefit plan ... if it has a connection with or reference to such a plan." *Id*. at 96-97.

The ordinance clearly refers to ERISA plans and hence is preempted. Indeed, the ordinance expressly applies a special minimum wage schedule to "Schedule 1 employers that pay toward an employee's medical benefits plan." Ordinance § 4(B). It defines a "Medical benefits plan" as "a

silver or higher level essential health benefits package, as defined in 42 U.S.C. § 18022, or an equivalent plan that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan, whichever is greater." *Id.* § 2(O). Under these provisions, Schedule 1 employers that pay toward a silver or higher plan get an extra year—until 2018—to pay the $15 per hour minimum wage compared to Schedule 1 employers that pay toward a bronze plan (or do not pay toward any plan). The ordinance "specifically refers to welfare benefits plans regulated by ERISA and on that basis alone is preempted." *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130 (1992). "[A]ny state law imposing requirements by reference to [ERISA] covered programs must yield to ERISA." *Id.* at 130-131.

6. The Ordinance Violates Article I, Section 12 of the Washington Constitution.

Article I, Section 12 of the Washington Constitution provides: "No law shall be passed granting to any ... corporation ... privileges or immunities which upon the same terms shall not equally belong to all ... corporations." This provision was enacted to "eliminat[e] governmental favoritism toward certain business interests." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 782 (2014). It "is violated if a statute treats two businesses that are" similarly situated "differently." *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 607 (2008).

The ordinance violates Article I, Section 12. It clearly "involves a privilege or immunity." *Ockletree*, 179 Wn.2d at 776. Washington courts have long recognized a fundamental right to "'carry on business.'" *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 813 (2004). And "an exemption from a regulatory law that has the effect of benefiting certain businesses at the expense of others" is a "'privilege.'" *Am. Legion*, 164 Wn.2d at 607. The ordinance requires all employers to pay a $15 per hour minimum wage by 2025, but allows some smaller employers to reach that milestone at a slower pace. That slower phase-in is a privilege

which applies to "a designated class"—all Schedule 2 employers. *Ockletree*, 179 Wn.2d at 783. The ordinance denies small franchise businesses this privilege by defining them as large employers even as it extends this privilege to those businesses' competitors. And there is no "reasonable" basis "for distinguishing between those who" benefit from the privilege "and those who do not." *Id.* There is no "real and substantial difference[] bearing a natural, reasonable, and just relation to the subject matter of the act" that can justify depriving small franchise business of the privilege afforded to their similarly situated competitors simply by virtue of their affiliation with an interstate franchise network. *Id*. (quotation marks omitted).

B. Plaintiffs Will Suffer Irreparable Harm Without a Preliminary Injunction.

"It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quotation marks omitted). *See Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014). A showing of "serious questions going to the merits" satisfies the irreparable harm factor. If a law "raises serious constitutional concerns" "it follows" that "'irreparable harm is *likely*.'" *Rodriguez v. Robbins*, 715 F.3d 1127, 1144-45 (9th Cir. 2013) (quoting *Wild Rockies*, 632 F.3d at 1131).

Plaintiffs and other small franchisees will suffer four other irreparable harms absent relief: (1) competitive injury, (2) loss of customers, (3) loss of goodwill, and (4) the risk of going out of business. First, the ordinance will put all small franchise businesses at a competitive disadvantage relative to their non-franchise competitors. *See* Stempler Decl. ¶ 21; Lyons Decl. ¶ 18; Oh Decl. ¶ 12; Reynolds Decl. ¶ 29. The ordinance will increase labor costs for small franchises much more sharply than for similar non-franchise businesses. *See Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991) (enjoining rule that put plaintiffs at a "competitive disadvantage"); *Knudsen Corp. v. Nev. State Dairy Comm'n*, 676 F.2d 374, 378 (9th Cir. 1982) (injury to "ability to

compete" is irreparable harm) (Kennedy, J.); *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 555 F. App'x 730, 732 (9th Cir. 2014) (so is losing "competitive ground in the industry"); *Microsoft Corp. v. Mai*, No. C09-0474RAJ, 2009 WL 1393750, ¶ 14 (W.D. Wash. May 15, 2009).

Second, the ordinance will cause small franchise businesses in Seattle to lose customers. *See* Stempler Decl. ¶ 23; Lyons Decl. ¶ 19; Reynolds Decl. ¶ 29. The ordinance will increase the labor costs of small franchise businesses (more than their non-franchise competitors) and force them to raise prices (again, more than their non-franchised competition), which will cause them to lose customers. *Id*. The minimum wage hike will pressure businesses to trim margins to maintain customers, and in such a difficult market, the imposition of differential burdens on similarly situated businesses will make it very difficult for small franchisees to maintain customers. The risk of losing customers is an irreparable harm. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("threatened loss of prospective customers or goodwill certainly supports" irreparable harm finding); *Cellco P'ship v. Hope*, 469 F. App'x 575, 577 (9th Cir. 2012) (same); *Microsoft v. Motorola*, 871 F. Supp. 2d 1089, 1102-03 (W.D. Wash. 2012). The loss of even *one* customer constitutes irreparable harm "in the form of unquantifiable future damages." *UBS Fin. Servs. v. Hergert*, No. C13-1825RAJ, 2013 WL 5588315, at *2 (W.D. Wash. Oct. 10, 2013). The ordinance will cause small franchisees to lose customers in untold numbers.

Third, the ordinance will cause Plaintiffs and other small franchise businesses to suffer a loss of goodwill, itself an irreparable harm. *See Stuhlbarg*, 240 F.3d at 841. The ordinance

> sends the message that small franchise businesses are not welcomed or valued in Seattle as are other small businesses. And in public comments in which he tried to defend the ordinance's blatant discrimination against franchisees, the Mayor of Seattle called the franchise business model a "problem." He thereby communicated to the people of Seattle that small businesses like mine are bad and deserve to be treated worse than non-franchise businesses. The ordinance and the Mayor's public discourse about it send a clear message that he doesn't care that the ordinance discriminates

> against small franchise businesses or that it may cause businesses like mine to fail—and that the people of Seattle should not care either. [Lyons Decl. ¶ 21].

In addition, the Individual Plaintiffs and many other Seattle businesses are on a boycott list that accuses them of "supporting the lawsuit to block the minimum wage." Oh Decl. ¶ 17.

Fourth, as Mrs. Lyons states, "[t]he ordinance definitely threatens to put our BrightStar Care franchise out of business because, as explained, it will significantly raise our labor costs without doing the same for our direct non-franchise competitors. If our business fails, Mark and I could very well lose the home we live in, which we put up as security for the $235,000 loan we took out with the SBA." Lyons Decl. ¶ 20. "The threat of being driven out of business is sufficient to establish irreparable harm." *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1474 (9th Cir. 1985). So is the risk of losing one's home. Other small franchise businesses in Seattle will also face these risks.

C. The Balance of Equities Tips Definitively in Favor of Plaintiffs.

This factor considers "the balance of hardships between the parties." *Wild Rockies*, 532 F.3d at 1137. In contrast to Plaintiffs' many injuries, Defendants will suffer no harm from a limited preliminary injunction. The City "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145. It "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Where litigants seek only "to preserve, rather than alter, the *status quo* while they litigate the merits of th[eir] action" that fact "strengthens their position." *Rodde v. Bonta*, 357 F.3d 988, 999 n.14 (9th Cir. 2004). Here, the proposed injunction is even more modest. Plaintiffs do not seek to enjoin the entire law. They ask this Court to enjoin the provisions that discriminate against small franchisees. The new minimum wage hikes would take

effect for all employers, starting on April 1, 2015, with small franchisees following Schedule 2.

D. Granting Preliminary Injunctive Relief Is in the Public Interest.

"The public interest inquiry primarily addresses impact on non-parties rather than parties." *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 931 (9th Cir. 2003) (quotation marks omitted). Here, it "is clear that it would not be equitable or in the public's interest to allow the state to violate the requirements of federal law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (quotation marks and ellipses omitted). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (quotation marks omitted). The irreparable harms Plaintiffs face—deprivation of constitutional rights, competitive disadvantage, loss of customers and goodwill, the risk of going out of business—will also be inflicted upon hundreds of other small franchise businesses. *See* Reynolds Decl. ¶ 29. Given that the ordinance itself recognizes that having "500 employees is appropriate as distinguishing between larger and smaller employers," Ordinance § 1(9), the public interest clearly favors a preliminary injunction.

E. At a Minimum, the "Serious Questions" Test Warrants Preliminary Relief.

The standard factors—likely merits success, irreparable harm, balance of equities, and the public interest—all favor the issuance of a limited injunction. But at a minimum, Plaintiffs have raised "serious questions going to the merits" and shown a "balance of hardships that tips sharply towards" them, "a likelihood of irreparable injury" and that "the injunction is in the public interest." *Wild Rockies*, 632 F.3d at 1135. The *Wild Rockies* test thus calls for preliminary relief.

V. CONCLUSION

The Court should grant Plaintiffs' motion for a limited preliminary injunction and enjoin those provisions of the ordinance that discriminate against small franchise businesses.

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Respectfully submitted,

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Dated: August 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **DECLARATION OF CHARLES J. STEMPLER**

I, Charles J. Stempler, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I am a Plaintiff in the above-captioned action.

3. I am a resident of the City of Seattle. My family and I have lived in Seattle for 20 years.

4. I am a small business owner. I own Alphaprint, Inc., which does business as AlphaGraphics, a printing and marketing services business.

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5. AlphaGraphics operates pursuant to a franchise agreement.

6. I operate six AlphaGraphics business centers, five in Washington State and one in California. Of AlphaGraphics' five Washington locations, two are located in Seattle.

7. I purchased an existing AlphaGraphics store in May 2001. To finance the purchase, I invested $100,000 of my personal savings and took out Small Business Administration ("SBA") loans.

8. To be eligible for those SBA loans, my business had to be a small business, which it is. The SBA classifies commercial printing companies as small businesses if they have 500 or fewer employees.

9. In connection with the purchase of the AlphaGraphics store in May 2001, I executed a Franchise Agreement with the franchisor, AlphaGraphics, Inc. ("franchisor").

10. The franchisor's world headquarters are located in Salt Lake City, Utah.

11. Alphaprint, Inc. is incorporated under the laws of the State of Washington.

12. Alphaprint, Inc. is not owned in any part by the Franchisor.

13. My five AlphaGraphics stores in Washington employ a total of 85 employees, all of whom are paid more than the current state minimum wage.

14. My two AlphaGraphics locations in Seattle employ 69 workers, of whom 58 are paid by the hour. My 58 hourly employees in Seattle are now paid between $11.50 per hour and $28.00 per hour. Thirteen of those 58 hourly employees are now paid less than $15.00 per hour.

15. I provide health care, dental care, vision care, life insurance, long term disability

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insurance, and 401K benefits for all his employees. The franchisor does not contribute to these benefits.

16. Although my AlphaGraphics franchise locations employ far less than 500 employees, the AlphaGraphics franchise network with which it is associated collectively employs more than 500 employees throughout the United States. Seattle City Ordinance No. 124490 ("the ordinance") therefore treats AlphaGraphics as a large, "Schedule 1" Employer.

17. AlphaGraphics has 13 employees in Seattle who are now paid less than $15.00 per hour. Under the ordinance, the minimum wage for all of AlphaGraphics' employees will be $11.00 as of April 1, 2015, $12.50 as of January 1, 2016, $13.50 as of January 1, 2017, and $15.00 as of January 1, 2018.

18. The minimum wage hikes mandated by the ordinance for employees in the City of Seattle will cause AlphaGraphics to raise the hourly wages of employees outside of Seattle in order to maintain an equitable pay structure between the AlphaGraphics locations.

19. The minimum wage hikes mandated by the ordinance will cause AlphaGraphics to raise the hourly wages of employees who are paid more than the minimum wage in order to maintain an equitable pay structure within each AlphaGraphics location.

20. AlphaGraphics has approximately 15 similarly situated competitors in Seattle that are not franchise businesses. These non-franchise competitors are similarly situated to AlphaGraphics in terms their number of employees, revenue, and customers.

21. The ordinance will cause AlphaGraphics to be at a competitive disadvantage relative to its non-franchise competitors because, between April 1, 2015, and January 1, 2021,

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a higher minimum wage will apply to AlphaGraphics than to its non-franchise competitors, and therefore AlphaGraphics will face higher wage costs relative to those competitors. The ordinance gives my non-franchise competitors a city-mandated advantage.

22. In the market in which AlphaGraphics competes, most costs of doing business—such as rent and the cost of paper—are the about the same for everyone. The cost of labor is the most significant fungible factor. The ordinance will raise my labor costs sharply, but my non-franchise competitors will not face the same increase in labor costs.

23. The ordinance will cause AlphaGraphics to lose customers. A significant portion of my workforce is paid less than the minimum wages that the ordinance requires. The ordinance therefore will increase my labor costs. Increased labor costs will require me to raise prices. Raising prices will cause me to lose customers to AlphaGraphics' many non-franchise competitors, who will not have the same increased labor costs. My customers are very price sensitive. If my prices are higher than my competitors' prices, many prospective customers will decide to do business with my competitors instead of me.

24. In the printing and marketing business that AlphaGraphics is in, you have a constant need to attract new customers. Every day, 50% of my customers are up for grabs. The ordinance will increase my labor costs faster than it will increase the labor costs of my non-franchise competitors. I will have to raise prices, while my non-franchise competitors will have a competitive advantage. The ordinance will impair my ability to attract new customers and as a result I will lose new customers.

25. When I acquired my first store in 2001, I received four weeks of training from

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the franchisor in the basics of the printing business. The training took place in Tucson, Arizona. I paid all the costs of my training—room, board, tuition, and travel costs.

26. The franchisor, AlphaGraphics, Inc., does no national advertising.

27. Because the franchisor does no national advertising, the "AlphaGraphics" brand name does not resonate except in a few cities in which there are a number of AlphaGraphics stores in a concentrated area. The City of Seattle is not one of those cities.

28. The ability to use the "AlphaGraphics" brand name has not provided my business with any advantage over my non-franchised competitors.

29. I pay marketing fees to the franchisor. This marketing fee supports the franchisor's website, which links to my business' website (which I alone pay for) and the websites of other franchisees.

30. The marketing fee also pays for the right to receive advice from the franchisor with respect to the development of salespeople.

31. I also pay royalty fees to the franchisor. Those royalty fees pay for the right to use the AlphaGraphics brand, the ability to receive some ongoing training, and access to certain industry studies.

32. The franchisor recommends to its franchisees certain printing equipment providers. The franchisor negotiates certain prices with these equipment provides, but any franchisee could negotiate the same prices. I have not made use of any franchisor negotiated prices.

33. When a franchisee purchases equipment, the franchisor does not help the

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franchisee qualify for credit or provide any guarantees with respect to the purchase.

34. The market for printing paper is local. The franchisor attempts to negotiate prices in some markets—Seattle is not one of them—but the price terms are not advantageous.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31 day of July, 2014, at Seattle, Washington.

Charles J. Stempler

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **DECLARATION OF DAVID MEINERT**

I, David Meinert, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I was a member of Mayor Murray's Income Inequality Advisory Committee ("IIAC").

3. David Rolf was one of the co-chairs of the IIAC.

4. During the IIAC process, there were discussions about whether the Mayor's minimum wage bill should treat small franchise businesses as large employers. I had several

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meetings with David Rolf in which he told me that the purpose behind treating small franchise businesses as large employers under the minimum wage law was "to break the franchise model" and enable labor unions to organize the employees of such businesses.

5. Toward the end of the IIAC process, I attended a meeting with Craig Schafer, an IIAC member, Chris Gregorich, the Mayor's Chief of Staff, and Brian Surratt, a member of the Mayor's staff who worked with the IIAC. The meeting was held in a side room of Ivar's restaurant, which is owned by IIAC member Bob Donegan.

6. At the meeting, I objected to the idea of treating small franchise businesses as large employers under the minimum wage law. Mr. Gregorich assured us that the Mayor's bill would not do that because, he said, "that would be morally wrong."

Executed this 4 day of August, 2014, at Seattle, Washington.

David Meinert

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants.*	No. C14-848RAJ **DECLARATION OF DEAN HEYL**

I, Dean Heyl, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I received my law degree from the University of South Dakota in 1995. I am a member of the South Dakota bar, the District of Columbia bar, and the bar of the Supreme Court of the United States.

3. I am employed by the International Franchise Association ("IFA") as Vice President, State Government Relations, Public Policy and Tax Counsel.

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4. On May 30, 2104, I attended a meeting with the Honorable Edward Murray, the Mayor of the City of Seattle, in his office.

5. Among those who also attended the meeting were Harlan Levy of McDonald's Corporation, Matthew Lathrop of Yum! Brands, Inc., and Kathy Lyons, who owns a BrightStar Care franchise in Seattle.

6. Mr. Levy had requested the meeting to discuss the Mayor's minimum wage bill, including the provisions of the bill deeming small franchise businesses to be large businesses.

7. At the meeting, representatives of franchising expressed to the Mayor that the bill unfairly discriminated against small franchise businesses by failing to treat them like other small businesses.

8. The Mayor stated that the provisions of the bill treating small franchise business as if they were large businesses were included because they were required to secure the approval of the Service Employees International Union ("SEIU").

9. Near the end of the meeting, the Mayor said words to the effect that "you won't hear me slam quick service restaurants or the franchise model."

10. Less than two weeks later, on June 11, 2014, the Mayor issued a public statement regarding IFA's legal challenge to the minimum wage ordinance. The Mayor's statement said in part that "[t]here is a problem in the franchise business model ...."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 31st day of July, 2014, at Dallas, Texas.

Dean a. Heyl

Dean Heyl

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **DECLARATION OF JOHN R. REYNOLDS**

I, John R. Reynolds, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I am the President of the IFA Educational Foundation, a non-profit organization which conducts research and educational programs to expand the awareness of the role of franchising in the free enterprise system. I am also the vice president of business development for the International Franchise Association ("IFA").

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3. I have served in various capacities at the IFA for the past 27 years, as executive editor and associate publisher of *Franchising World* magazine, as director of communications, as vice president of marketing, and as executive vice president.

4. In the mid-1990's, I served as staff liaison to the newly formed IFA Franchisee Advisory Council, which spearheaded the inclusion of franchisees as members of IFA. In my current position, I work closely with IFA's Research Committee, the Foundation Board of Trustees, the Institute of Certified Franchise Executives Board of Governors, the Diversity Institute Board, and the IFA Franchisee Forum.

5. I am a Certified Franchise Executive (C.F.E.), a designation awarded to those who complete a course of study in franchise management and meet continuing education requirements.

The International Franchise Association

6. The International Franchise Association, Inc., is a membership organization of franchisors, franchisees, and suppliers.

7. Founded in 1960, the IFA is the world's oldest and largest organization representing the use of the franchise business model. The IFA's membership includes more than 1,350 franchisor companies and more than 12,000 franchisees nationwide.

8. The IFA is incorporated under the laws of the State of Illinois.

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Franchisors and Franchisees in the United States,
the State of Washington, and the City of Seattle

9. The source of the data in this section is FRANdata, a company that researches, collects, and analyzes data on franchisors and franchisees. The data in paragraphs 10 through 17 are based on Franchise Disclosure Documents filed within the last three years (2012-2014).

10. There are 2,536 franchisors headquartered in the United States.

11. There are 50 franchisors headquartered in the State of Washington.

12. There are 10 franchisors headquartered in the City of Seattle.

13. The percentage of U.S. franchisors headquartered in Washington is 1.97%.

14. The percentage of U.S. franchisors headquartered in Seattle is 0.39%.

15. Franchising is an interstate business. The percentage of franchisors that have licensed franchisees to do business under the franchisor's trade name or trademark in more than one state (or outside of the state in which the franchisor is headquartered) is 87.99%.

16. A large number of franchisors located outside of the State of Washington have franchisees located within Washington or Seattle. There are 661 franchisors headquartered outside of Washington that have licensed franchisees within Washington to do business under the franchisor's trade name or trademark. There are 211 franchisors headquartered outside of Washington that have licensed franchisees within Seattle to do business under the franchisor's trade name or trademark.

17. The vast majority of franchisees in Seattle have out-of-state franchisors. There are 623 franchisees in Seattle, of which 600, or 96.3%, have out-of-state franchisors. All of the 23 franchisees in Seattle that have in-state franchisors are associated with franchisees outside of

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the State of Washington through the operation of their franchise networks. There are 850 franchise establishments in Seattle, of which 820, or 96.5%, have out-of-state franchisors.

18. Although some people when they think about franchise businesses initially think of quick service restaurants, the franchising industry is very diverse. In Seattle, franchise businesses occupy the following non-restaurant related business sectors:

- Real estate brokers/services
- Lodging
- Commercial/residential cleaning
- Tax services
- Hardware products/tool stores
- Fitness centers
- Hair care
- Tune ups, lubes & oil related
- Convenience stores
- Mailing, packaging, shipping
- Auto – general
- Education courses
- Carpet and upholstery cleaning
- Health – general
- Home health care
- Financial services
- Financial services
- Optical products and services
- Education – general
- Fitness and amusement centers
- Property inspection services

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- Children's educational programming
- General printing services
- Maid services
- Painting services
- Muffler, front end, shocks, etc.
- Travel agencies
- Pet-related products/services
- General auto repair services

19. Based on 2012 unit data reported in their Franchise Disclosure Documents, 7% of franchisors had more than 500 units (*i.e.*, franchised business locations) in the United States and only 26% had more than 100 units.

20. There are 54 publicly traded companies whose primary business is the franchising model.

21. Within the Fortune 100, there are no companies whose primary business is franchising. McDonald's Corporation is number 106 on the list. There are three companies in the Fortune 100 that have franchise brands as minority parts of their operations: UPS, Cardinal Health, and Berkshire Hathaway.

IFA Members in Seattle

22. IFA has 13 franchisee members that own and operate franchise establishments in the City of Seattle, each of which employs fewer than 500 employees. These 13 franchisees are associated with eight franchisors, each of which is based outside of the State of Washington.

23. Some of the 13 IFA franchisee members in Seattle are licensed to do business under the trade name or trademark of a franchisor whose establishments (both franchised and

corporately owned) collectively employ more than 500 employees in the United States and therefore are Schedule 1 employers for purposes of Seattle City Ordinance No. 124990 ("the ordinance"). The ordinance therefore puts these IFA members at a competitive disadvantage vis-à-vis similarly situated non-franchise competitors in Seattle that are treated as Schedule 2 employers.

24. IFA has three franchisor members whose corporate headquarters are located in Seattle: HomeTask, Inc., its subsidiary, Pet Butler, and HomeWell Senior Care, Inc. These franchisors, and their franchisees, must comply with the ordinance and must pay their employees in Seattle no less than the minimum wage prescribed by the ordinance.

Small Franchise Businesses

25. Small franchise businesses are like other small businesses. Each franchisee is an independently owned and operated business. Franchisees manage and operate all of the day-to-day aspects of their business, including making their own human resource decisions on which workers to hire, how many people to hire, the benefits they offer, and how much each of them can afford to pay their staff—just like any other small independent business owner.

26. Franchisees independently invest in their businesses and pay the operating costs of their businesses—as would any other small business owner—including but not limited to rent, wages, taxes, and debt service. No other party shares in these small business obligations.

27. Franchisees are merely licensees of the franchisor's brands and methods of doing business and that is their sole difference from other independently owned small businesses. As licensees, franchisees generally pay a continuing licensing fee or royalties for the use of the

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franchisor's brand and intellectual property, as well as certain services. Even though franchisors share a common brand with their franchisees, franchisors are not owners of their franchisee's independent businesses and do not necessarily share in their profits or their losses.

28. Franchisors and franchisees are separate business entities. A franchisee is not the employee of the franchisor. And the employees of a franchisee are not employees of the franchisor.

29. I have reviewed the declarations of Charles J. Stempler, Katherine M. Lyons, and Ronald Oh. All of them declare that the ordinance will give a competitive advantage to their similarly situated non-franchise competitors; increase their labor costs; force them to raise prices; and cause them to lose customers. The ordinance will have the same effect upon the hundreds of other small franchise businesses in Seattle. The small franchise businesses owned and operated by Mr. Stempler, Mrs. Lyons, and Mr. Oh are similar to other small franchise businesses in Seattle and elsewhere in the United States in terms of the competition they face from non-franchise businesses; the effect of rising labor costs on, among other things, the prices they must charge; and the price sensitivity of their customers.

AlphaGraphics, Inc.

30. AlphaGraphics, Inc. is a franchisor. Its world headquarters are located in Salt Lake City, Utah.

31. AlphaGraphics, Inc. has franchise agreements with 216 franchisees that own and operate 245 business centers in the United States. Of those 245 business centers, seven are located in the State of Washington and 238 are located outside of the State of Washington.

BrightStar Franchising, LLC

32. BrightStar Franchising, LLC, is a franchisor. It is an Illinois limited liability company with its principal place of business in Gurnee, Illinois.

33. BrightStar Franchising, LLC, has franchise agreements with approximately 200 franchisees that own and operate 260 franchise locations in the United States. Of those 260 locations, 257 are located outside of the State of Washington.

Choice Hotels International, Inc.

34. Choice Hotels International, Inc. ("Choice"), is a franchisor. Choice is incorporated in Delaware and has its corporate offices in Rockville, Maryland.

35. Comfort Inn, Comfort Inn & Suites, and Comfort Suites are some of Choice's brands.

36. As of December 31, 2013, there were 1,887 Comfort Inn, Comfort Inn & Suites, and Comfort Suites hotels in the United States, all of which are owned and operated by franchisees. Of those 1,887 hotels, 29 were located in Washington State.

InterContinental Hotels Group PLC

37. InterContinental Hotels Group PLC ("IHG") is a franchisor.

38. IHG is a British company with its global headquarters in Denham, U.K. Its U.S. headquarters are in Atlanta, Georgia.

39. IHG's brands include Holiday Inn and Holiday Inn Express.

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40. As of March 31, 2014, there were 2,736 Holiday Inn and Holiday Inn Express hotels in North and South America, most of which are owned and operated by franchisees. Of those 2,736 hotels, 37 are located in Washington State.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30 day of July, 2014, at Vancouver, British Columbia.

John R. Reynolds

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **DECLARATION OF KATHERINE M. LYONS**

I, Katherine M. Lyons, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I am a Plaintiff in the above-captioned action, as is my husband, Mark Lyons.

3. Mark and I own and operate BrightStar Care of North Seattle ("BrightStar Care"), a small business that provides both skilled and unskilled private duty home care and home services in the City of Seattle and surrounding areas.

4. BrightStar Care operates pursuant to a franchise agreement.

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5. Mark and I purchased our BrightStar Care franchise in February 2012. We invested about $200,000 of our personal savings and also borrowed $235,600 from the Small Business Administration ("SBA"). Our SBA loan is secured by a mortgage on our home.

6. We qualified for the SBA loan because our BrightStar Care franchise is a small business. If we were not a small business, the SBA would not and could not have made the loan to us.

7. In February 2012, Mark and I executed a Franchise Agreement with the franchisor, BrightStar Franchising, LLC, a company based in Illinois.

8. Our BrightStar Care business is incorporated under the laws of the State of Washington as MKL Services LLC.

9. MKL Services LLC is not owned in any part by the franchisor.

10. Mark and I have never received any salary or taken any profits from BrightStar Care.

11. The office of my BrightStar Care business is located in the City of Seattle.

12. My BrightStar Care business employs Certified Nursing Assistants, Licensed Practical Nurses, and Registered Nurses.

13. My BrightStar Care business employs 22 employees in Seattle, of whom 15 are paid by the hour. All of our hourly employees are paid more the current state minimum wage.

14. BrightStar Care now pays its 15 hourly employees between $12.00 per hour and $35.00 per hour. Fourteen of BrightStar Care's current hourly employees are paid less than $15.00 per hour.

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15. Although the BrightStar Care franchise that Mark and I own and operate employs far less than 500 employees, our BrightStar Care franchise is associated with a franchise network that collectively employs more than 500 employees. Therefore, Seattle City Ordinance No. 124990 ("the ordinance") treats our small business as a large, "Schedule 1" employer.

16. The market in which our BrightStar Care franchise competes is very competitive. We have literally hundreds of competitors in its market, including non-franchise competitors.

17. We have four direct competitors that are non-franchised but otherwise very similarly situated to our business in terms of services provided, clients, employees, and revenue. In fact, our direct competitors currently have more clients, employees and revenues.

18. The ordinance will cause our BrightStar Care business to be at a competitive disadvantage relative to our non-franchise competitors because, between April 1, 2015, and January 1, 2021, a higher minimum wage will apply to us than to our non-franchise competitors, and thus we will face higher wage costs relative to our competitors.

19. The ordinance will cause us to lose customers. The typical client of the home care and home services that we provide lives on a fixed income. These clients are extremely price sensitive. The ordinance will significantly increase our labor costs. Many of our employees are now paid $12.00 per hour. All but one of our hourly employees are now paid less than $15.00 per hour. But as of January 1, 2016, the minimum wage applicable to our business will be $13.00 per hour, and as of January 1, 2017, it will be $15.00 per hour. A

wage will apply to our non-franchise competitors. As our labor costs go up, we will have to charge higher prices. Indeed, our product—home care and home services—is labor. Thus, as our labor costs rise, we have no choice but to raise our prices. As we raise prices due to the ordinance, we will lose current and future customers given our very competitive market, our extremely price-sensitive clients, and the fact that our non-franchise competitors will receive the advantage of a lower minimum wage.

20. The ordinance definitely threatens to put our BrightStar Care franchise out of business because, as explained, it will significantly raise our labor costs without doing the same for our direct non-franchise competitors. If our business fails, Mark and I could very well lose the home we live in, which we put up as security for the $235,000 loan we took out with the SBA.

21. Even if we manage to stay in business after the ordinance goes into effect, the ordinance has caused and will cause our business to lose goodwill in Seattle. The ordinance discriminates against small businesses like mine for no reason other than that they are franchise businesses. In so doing, the ordinance sends the message that small franchise businesses are not welcomed or valued in Seattle as are other small businesses. And in public comments in which he tried to defend the ordinance's blatant discrimination against franchisees, the Mayor of Seattle called the franchise business model a "problem." He thereby communicated to the people of Seattle that small franchise businesses like mine are bad and deserve to be treated worse than non-franchise businesses. The ordinance and the Mayor's public discourse about it send a clear message that he doesn't care that the ordinance discriminates against small

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franchise businesses or that it may cause business like mine to fail—and that the people of Seattle should not care either.

22. The Mayor said on television that franchisees are "part of a larger, national corporate monopoly"—which is not true. BrightStar Care is not a monopoly. Nor is it part of a larger corporation. We are not a subsidiary of the franchisor. My small business is owned and operated by me and my husband.

23. When I became a BrightStar Care franchisee, I received one week of sales training at the franchisor's headquarters in Illinois. I paid for the travel costs, as well as room and board.

24. The franchisor did no national advertising of the BrightStar Care brand prior to July 2014. The advertising fee that I pay to franchisor went up when the franchisor started doing some national advertising on a few television networks in July 2014.

25. The franchisor does no local advertising. I paid for some local radio advertising for approximately one year.

26. My BrightStar Care franchise is operated out of office space that we rent. The franchisor did not locate the office space, did not negotiate the rent, and does not pay any part of the rent.

27. The franchisor does not negotiate prices with vendors for the home care and home services supplies used in my business. The franchisor does negotiate prices for certain general office supplies, but because of shipping costs those prices are actually higher than the prices I can obtain locally. The franchisor requires me to purchase from particular vendors

certain materials, such as letterhead, containing the BrightStar Care trademark.

28. I belong to the Home Care Association of America ("HCAOA"), the Home Care Association of Washington ("HCAW"), and the Washington Home Care Association ("WAHCA"). In terms of support for my business, there is very little, if anything, that the franchisor makes available to me that I cannot get through membership in one or more of these associations. These associations include both franchisees and non-franchisees as members.

29. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31 day of July, 2014, at Seattle, Washington.

Katherine M. Lyons

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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **DECLARATION OF RONALD OH**

I, Ronald Oh, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

2. I am a plaintiff in the above-captioned action.

3. I am the General Manager of a Holiday Inn Express hotel ("Holiday Inn") located in Seattle.

4. My Holiday Inn operates pursuant to a franchise agreement.

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5. My Holiday Inn is owned by Advance Holdings, LLC, a corporation incorporated under the laws of the State of Washington. My Holiday Inn is family-owned business. I have an ownership interest in it.

6. I am a member of the Korean American Hotel Owners Association of Washington ("KAHOA") and a former member of the Asian American Hotel Owners Association ("AAHOA").

7. My Holiday Inn has 102 rooms and 28 employees. Twenty-two of those 28 employees are paid by the hour.

8. All of my 22 hourly employees are paid more the current state minimum wage. Those 22 employees are paid between $9.50 and $12.00 per hour.

9. My non-managerial employees are paid, on average, $10.25 per hour.

10. Because my Holiday Inn is associated with other franchise businesses that collectively employ more than 500 employees, Seattle City Ordinance No. 124990 ("the ordinance") deems my Holiday Inn to be a large employer.

11. My Holiday Inn faces competition from eight to ten similarly situated non-franchise hotels that are small employers.

12. The ordinance will cause my Holiday Inn to be at a competitive disadvantage relative to its non-franchise competitors because, between April 1, 2015, and January 1, 2021, a higher minimum wage will apply to my Holiday Inn than to its non-franchise competitors, and therefore my Holiday Inn will face higher wage costs relative to those non-franchised competitors.

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13. When the minimum wage goes to $11.00 per hour for large employers on April 1, 2015, that will add approximately $80,000 to my labor costs.

14. When the minimum wage reaches $15.00 per hour, that will add $250,000 to my labor costs compared to my current labor costs.

15. Because of the ordinance, my Holiday Inn will have to raise its room rates. As a result of raising its prices, the hotel potentially will lose customers during the non-peak season—the period after the first week of September through April.

16. The ordinance also may cause me to make changes to the workforce at the Holiday Inn. As General Manager, I am reviewing the hotel's employees. If I determine that a particular employee is not best for us at a higher wage level, I will initiate a new hiring process and replace that worker. Although the ordinance goes into effect on April 1, 2015, I need to be proactive. Therefore, I have already begun this employee review process.

17. My Holiday Inn has lost and will continue to lose goodwill because of the ordinance. It is on a boycott list which states that "Holiday Inn Express is supporting the lawsuit to block the minimum wage." http://www.supportseattleworkers.com/list.html. But we are not trying to block the minimum wage. We just don't want the minimum wage law to discriminate against small franchise businesses. The ordinance discriminates against my business. That is the reason why I am a plaintiff in this lawsuit.

18. My Holiday Inn opened on November 13, 2001. We did not turn a profit for four years.

19. The franchisor did not locate, own, acquire, or convey the property on which

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my hotel is located.

20. The franchisor did not build my hotel. It did not pay for or finance the construction of my hotel or provide any loan guarantees.

21. The franchisor does national advertising of the Holiday Inn brand, but I pay toward such advertising as part of the royalty fees that I pay. The franchisor does not do any local advertising in the Seattle area. The franchisor does not advertise my specific hotel.

22. It is easy for people to obtain information about hotels in places they wish to stay, including hotels they have not heard of before. Today, before people book a hotel, they go on the internet and use websites to find hotels and compare prices, amenities, reviews, and ratings. One can view hotels and hotel rooms on line and consider the ratings and reviews of people who have stayed at the hotel. This is the process through which people make hotel choices these days.

23. The franchisor negotiates prices for certain supplies and services from certain vendors, but this is not something that the franchisor is uniquely able to do. KAHOA and AAHOA also negotiate prices for their members. I am currently a KAHOA member. The KAHOA or AAHOA negotiated price sometimes is better than the price negotiated by the franchisor.

24. My franchisor provides training, but we pay for it.

25. As a franchisee, we get what we pay for.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

BANCROFT PLLC
1919 M Street, NW, Suite 470
Washington, DC 20036
(202) 234-0090

Executed this 4th day of August, 2014, at Seattle, Washington.

Ronald Oh

BANCROFT PLLC
1919 M Street, NW, Suite 470
Washington, DC 20036
(202) 234-0090

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., et al.,

Plaintiffs,

vs.

CITY OF SEATTLE, et al.,

Defendants.

No. C14-848RAJ

DECLARATION OF DAVID J. GROESBECK

I, David J. Groesbeck, declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information. I am one of the attorneys for Plaintiffs in the above-referenced case.

2. Exhibit 1 hereto is a true and correct copy of Seattle City Ordinance No. 124490, enacted on June 3, 2014.

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3. Exhibit 2 hereto is a true and correct copy of an e-mail, sent on May 3, 2014, from Nick Hanauer, a member of the Income Inequality Advisory Committee ("IIAC"), to Tim Burgess, President of the Seattle City Council.

4. Exhibit 3 hereto is a true and correct copy of an e-mail, sent on May 5, 2014, from Robert Feldstein, a member of Mayor's staff, to Brian Surratt, another member of the Mayor's staff.

5. Exhibit 4 hereto is a true and correct copy of two e-mails, sent on May 5, 2014, from IIAC member David Meinert to Mr. Surratt and Mr. Feldstein.

6. Exhibit 5 hereto is a true and correct copy of a May 28, 2014 post on David Meinert's Facebook page, available at https://www.facebook.com/david.meinert/posts/10152163225964639

7. Exhibit 6 hereto is a true and correct copy of a letter, dated May 19, 2014, from the International Franchise Association ("IFA") to Seattle Mayor Edward Murray and the Seattle City Council.

8. Exhibit 7 hereto is a true and correct copy of a letter, dated May 27, 2014, from IFA board member Michael Seid to Seattle Mayor Edward Murray and the Seattle City Council.

9. Exhibit 8 hereto is a true and correct copy of a letter, dated May 31, 2014, from Mr. Seid to Seattle Mayor Edward Murray and the Seattle City Council.

10. Exhibit 9 hereto is a true and correct copy of an editorial published in *The Seattle Times*, dated May 30, 2014.

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11. Exhibit 10 hereto is a true and correct copy of an e-mail, sent on May 31, 2014, from IIAC member Nick Hanauer to all members of the Seattle City Council, IIAC co-chair David Rolf, Mr. Feldstein, and Mr. Surratt.

12. Exhibit 11 hereto is a partial transcript of the public hearing of the Seattle City Council's Committee on Minimum Wage and Income Inequality, dated May 22, 2014, video available at www.seattlechannel.org/videos/video.asp?ID=2161440.

13. Exhibit 12 hereto is a true and correct copy of a May 23, 2014 post on the official website of Kshama Sawant, Member of the Seattle City Council, titled *Stand strong against corporate loopholes.*, available at http://sawant.seattle.gov/stand-strong-against-corporate-loopholes/.

14. Exhibit 13 hereto is a true and correct copy of the Seattle City Council Minutes for June 2, 2014.

15. Exhibit 14 hereto is a true and correct copy of the International Franchise Association's June 2, 2014 release *Advisory: Franchise Industry Announces Intention to Sue Seattle for Discriminatory Wage Hike*.

16. Exhibit 15 hereto is a true and correct copy of a tweet, sent on June 3, 2014, from Councilmember Kshama Sawant's official Twitter account, available at https://twitter.com/cmkshama/status/473896322768990211.

17. Exhibit 16 hereto is a true and correct copy of *Mayor Murray Statement on International Franchise Association Lawsuit*, dated June 11, 2014, available at http://murray.seattle.gov/mayor-murray-statement-on-international-franchise-association-

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lawsuit/#sthash.ysxs7e8b.dpbs.

18. Exhibit 17 hereto is a partial transcript of Seattle Mayor Edward Murray's interview on The Reid Report, MSNBC, June 16, 2014.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th Day of August, 2014, at Spokane, Washington.

David J. Groesbeck

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Gregory C. Narver	gregory.narver@seattle.gov
Gary T. Smith	gary.smith@seattle.gov
John B. Schochet	john.schochet@seattle.gov
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David J. Groesbeck	david@groesbecklaw.com

s/ H. Christopher Bartolomucci
H. Christopher Bartolomucci
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Exhibit 1

Ordinance No. 124490

Council Bill No. 118098

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.19 to the Seattle Municipal Code; establishing minimum wage and minimum compensation rates for employees performing work in Seattle; and prescribing remedies and enforcement procedures.

Related Legislation File: _____

Date Introduced and Referred: 5/19/14	To: (committee): Select Committee on Minimum Wage and Income Inequality
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: June 2, 2014	Date Presented to Mayor: June 3, 2014
Date Signed by Mayor: June 3, 2014	Date Returned to City Clerk: June 3, 2014
Published by Title Only X Published in Full Text _____	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Sawant, Licata, Godden, Harrell, Rasmussen

Committee Action:

Date	Recommendation	Vote
5-29-14	PASS as amended	SB, TB, SC, JG, BH, MOB, KS 7-0

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
June 2, 2014	Passed	9-0

Brian Surratt/pml/de
MOS Minimum Wage ORD
May 29, 2014
Version # 3

CITY OF SEATTLE

ORDINANCE 124490

COUNCIL BILL 118098

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.19 to the Seattle Municipal Code; establishing minimum wage and minimum compensation rates for employees performing work in Seattle; and prescribing remedies and enforcement procedures.

WHEREAS, United States President Barack Obama has called addressing income inequality the "the defining issue of our time;"

WHEREAS, the noted economist Thomas Piketty wrote in his landmark book *Capital in the 21st Century,* the need to act on income inequality is profound as "[r]eal wages for most US workers have increased little if at all since the early 1970s, but wages for the top one percent of earners have risen 165 percent, and wages for the top 0.1 percent have risen 362 percent;"

WHEREAS, the tens of thousands of low wage workers in Seattle who struggle to meet their most basic needs, the increasing unaffordability of this city for so many of our citizens, and the hollowing-out of the middle class strike at the core of who we are as a community dedicated to democratic principles and economic advancement and opportunity;

Whereas, Seattle has one of the worst gender wage gaps in the country, where a majority of low wage workers tend to be women, and a higher minimum wage is a powerful tool to reduce the income disparity between women and men;

WHEREAS, many Seattle workers cannot fully participate in our community's dynamic civic life or pursue the myriad educational, cultural, and recreational opportunities that constitute a flourishing life because many struggle to meet their households' most basic needs;

WHEREAS, Seattle is home to many innovative and progressive employers who contribute significantly to the economic prosperity of the region;

WHEREAS, Seattle has a long and proud tradition of advocating for worker rights and promoting social and economic justice;

WHEREAS, minimum wage laws promote the general welfare, health, and prosperity of Seattle by ensuring that workers can better support and care for their families and fully participate in Seattle's civic, cultural, and economic life;

WHEREAS, the Mayor signed Executive Order 2014-01 directing all City of Seattle Department Directors to prioritize and work in coordination with the City's Personnel Department and Budget Office to develop a comprehensive implementation plan that ensures a minimum hourly wage of $15.00 for employees of the City of Seattle, and directing the Personnel Department and Budget Office to seek concurrence and coordinate with the City Council and the Mayor's Income Inequality Advisory Committee;

WHEREAS, the Mayor and City Council has convened a Labor Standards Advisory Committee and the City expects the committee will provide feedback later in 2014 on recommended approaches for enhancing the City's enforcement of various labor laws including, but not limited to, minimum wage laws;

WHEREAS, the City is committed to evaluating options for securing progressive sources of funding to ensure that non-profit human services providers with City-funded contracts can provide both a living wage to their workforce and continue to provide critical services for those in the greatest need;

WHEREAS, Seattle's employer and worker advocacy community have come together to respond to the challenge of rising income inequality and ensure broadly shared prosperity in our community;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council ("Council") makes the following findings of fact and declarations:

1. Over 100,000 Seattle workers earn wages insufficient to support themselves and their families;

2. In Seattle, the weight of income inequality falls disproportionately on people of color and on women. More than 34 percent of all women and over 40 percent of African Americans and Asian and Pacific Islander Americans rank among low wage workers in Seattle. For Latinos, that number is nearly 50 percent, and it is 70 percent for Native Americans;

3. Over 24 percent of Seattle residents earn hourly wages of $15.00 per hour or less and approximately 13.6 percent of the Seattle community lives below the poverty level;

4. Some employers, in particular small businesses and not-for-profit organizations, may have difficulty in accommodating the increased costs;

5. Numerous studies suggest minimum wages benefit employers and the economy as a whole by improving employee performance, reducing employee turnover, lowering absenteeism, and thereby improving productivity and the quality of the services provided by employees;

6. The Mayor formed an "Income Inequality Advisory Committee," a group comprised of representatives from Seattle's employer, labor, and non-profit communities to address the pressing issue of income inequality in Seattle;

7. The Income Inequality Advisory Committee was charged with delivering recommendations on how best to increase the minimum wage in Seattle in a way that ensures that our economy is vibrant enough and fair enough to embrace all who live and work here;

8. The Income Inequality Advisory Committee reviewed the impact of minimum wage increases in other cities, relevant studies and other appropriate data, and hosted numerous public engagement forums, including industry-specific forums and the "Income Inequality Symposium" at Seattle University;

9. The Income Inequality Advisory Committee determined the following: Seattle's minimum wage should be raised to $15.00 per hour; the minimum wage should be phased in over time, the first year of implementation of a phased increase of the minimum wage should begin in 2015; once the minimum wage reaches $15.00 per hour it should rise in concert with the consumer price index; exemptions from the $15.00 per hour minimum wage are limited to only those allowed under the Washington State Minimum Wage Act; a benchmark of 500 employees is appropriate as distinguishing between larger and smaller employers in recognition that smaller

businesses and not-for-profits would face particular challenges in implementing a higher minimum wage;

10. The Income Inequality Advisory Committee also recognized a set of principles for a strong enforcement and culturally competent worker and business education program that integrates existing annual business license processes; creates significant penalties for intentional and repeat violations; establishes worker and employer outreach and education programs through contracts with 501(c)3 community-based organizations and business associations; develops an incentive structure for businesses with solid labor practices; emphasizes culturally competent communication with employees and employers; connects workers with the appropriate local, state, and federal agencies; and establishes a business, labor, and community oversight committee to monitor implementation of the City of Seattle's new labor standards education and enforcement function. These principles will be forwarded to the City of Seattle's Labor Standards Advisory Committee; and

11. The public welfare, health, and prosperity of Seattle require wages and benefits sufficient to ensure a decent and healthy life for all Seattle workers and their families.

Section 2. A new Section 14.19.010 is added to the Seattle Municipal Code as follows:

14.19.010 Definitions

For the purposes of this Chapter:

A. "Actuarial value" means the percentage of total average costs for covered benefits that a health benefits package will cover;

B. "Bonuses" means non-discretionary payments in addition to hourly, salary, commission, or piece-rate payments paid under an agreement between the employer and employee;

C. "Commissions" means a sum of money paid to an employee upon completion of a task, usually selling a certain amount of goods or services;

D. "Department" means the Department of Finance and Administrative Services;

E. "Director" means the Director of the Department of Finance and Administrative Services, or his or her designee;

F. "Employ" means to permit to work;

G. "Employee" means "employee," as defined under Section 12A.28.200. Employee does not include individuals performing services under a work study agreement;

H. "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

I. "Franchise" means a written agreement by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and

3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee;

J. "Franchisee" means a person to whom a franchise is offered or granted;

K. "Franchisor" means a person who grants a franchise to another person;

L. "Hearing Examiner" means the official appointed by the Council and designated as the Hearing Examiner, or that person's designee (Deputy Hearing Examiner, Hearing Examiner Pro Tem, etc.);

M. "Hourly minimum compensation" means the minimum compensation due to an employee for each hour worked during a pay period;

N. "Hourly minimum wage" means the minimum wage due to an employee for each hour worked during a pay period;

O. "Medical benefits plan" means a silver or higher level essential health benefits package, as defined in 42 U.S.C. § 18022, or an equivalent plan that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan, whichever is greater;

P. "Minimum compensation" means the minimum wage in addition to tips actually received by the employee and reported to the Internal Revenue Service, and money paid by the employer towards an individual employee's medical benefits plan;

Q. "Minimum wage" means all wages, commissions, piece-rate, and bonuses actually received by the employee and reported to the Internal Revenue Service;

R. "Piece-rate" means a price paid per unit of work;

S. "Rate of inflation" means the Consumer Price Index annual percent change for urban wage earners and clerical workers, termed CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States Department of Labor;

T. "Schedule 1 Employer" means all employers that employ more than 500 employees in the United States, regardless of where those employees are employed in the United States, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;

U. "Schedule 2 Employer" means all employers that employ 500 or fewer employees regardless of where those employees are employed in the United States. Schedule 2 employers do not include franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;

V. "Tips" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip;

W. "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the Director. Commissions, piece-rate, and bonuses are included in wages. Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of this Chapter.

Section 3. A new Section 14.19.020 is added to the Seattle Municipal Code as follows:

14.19.020 Employment in Seattle and Employer Schedule Determination

A. Employees are covered by this Chapter for each hour worked within the geographic boundaries of Seattle, provided that an employee who performs work in Seattle on an occasional basis is covered by this Chapter in a two-week period only if the employee performs more than two hours of work for an employer within Seattle during that two-week period. Time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle, with no employment-related or commercial stops in Seattle except for refueling or the employee's personal meals or errands, is not covered by this Chapter. An employee who is not covered by this Chapter is still included in any determination of the size of the employer.

B. For the purposes of determining whether a non-franchisee employer is a Schedule 1 employer or a Schedule 2 employer, separate entities that form an integrated enterprise shall be considered a single employer under this Chapter. Separate entities will be considered an integrated enterprise and a single employer under this Chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;

2. Degree to which the entities share common management;

3. Centralized control of labor relations; and

4. Degree of common ownership or financial control over the entities.

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this section as long as (1) the separate legal entities operate substantially in separate physical locations from one another, and (2) each separate legal entity has partially different ultimate ownership. The determination of employer schedule for the current calendar year will be calculated based upon the average number of employees employed per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees employed per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

C. The Director shall have the authority to issue a special certificate authorizing an employer to pay a wage less than the City of Seattle minimum wage, as defined in this Chapter, but above the Washington State minimum wage, as defined in RCW 49.46.020. Such special certificates shall only be available for the categories of workers defined in RCW 49.46.060 and shall be subject to such limitations as to time, number, proportion, and length of service as the Director shall prescribe. Prior to issuance, an applicant for a special certificate must secure a letter of recommendation from the Washington State Department of Labor and Industries stating that the applicant has a demonstrated necessity pursuant to WAC 296-128.

D. The Director shall by rule establish the minimum wage for employees under the age of eighteen years, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations.

Section 4. A new Section 14.19.030 is added to the Seattle Municipal Code as follows:

14.19.030 Hourly Minimum Wage – Schedule 1 Employers

A. Effective April 1, 2015, Schedule 1 employers shall pay each employee an hourly minimum wage of at least $11.00. Pursuant to the following schedule, effective January 1 of each year thereafter, Schedule 1 employers shall pay any employee an hourly minimum wage as follows:

Year	*Hourly Minimum Wage*
2016	$13.00
2017	$15.00

Effective January 1, 2018, the hourly minimum wage paid by a Schedule 1 employer to any employee shall be increased annually on a percentage basis to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter.

B. Schedule 1 employers can meet the applicable hourly minimum wage requirement through a payment of the minimum wage, provided that the Schedule 1 employer is in compliance with all applicable law. Where an employee is paid on a commission or piece-rate basis, wholly or partially, the amount earned on such basis in each work-week period may be credited as a part of the total wage for that period, and the total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate. Where an employee is paid a bonus, the amount of the bonus in each work-week period may be credited as a part of the total wage for that period, and the total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate. Pursuant to the following schedule, effective January 1, 2016,

Schedule 1 employers that pay toward an individual employee's medical benefits plan shall pay the employee an hourly minimum wage as follows:

Year	*Hourly Minimum Wage*
2016	$12.50
2017	$13.50
2018	$15.00

Effective January 1, 2019, payment by the employer of health benefits for employees shall no longer affect the hourly minimum wage paid by a Schedule 1 employer.

Section 5. A new Section 14.19.040 is added to the Seattle Municipal Code as follows:

14.19.040 Hourly Minimum Wage – Schedule 2 Employers

A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum wage of at least $10.00. Schedule 2 employers can meet the applicable hourly minimum wage requirement through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law. Effective January 1 of 2016 and each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum wage that is the lower of (a) the applicable hourly minimum wage for Schedule 1 Employers or (b) the hourly minimum wage shown in the following schedule:

Year	*Hourly Minimum Wage*
2016	$10.50
2017	$11.00
2018	$11.50

2019	$12.00
2020	$13.50
2021	$15.00
2022	$15.75
2023	$16.50
2024	$17.25

Effective on January 1 of 2025, and January 1 of every year thereafter, the hourly minimum wage paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.

B. Schedule 2 employers can meet the applicable hourly minimum wage requirements through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law.

Section 6. A new Section 14.19.050 is added to the Seattle Municipal Code as follows:

14.19.050 Hourly Minimum Compensation – Schedule 2 Employers

A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum compensation of at least $11.00. Effective January 1 of each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum compensation that is the lower of (a) the applicable hourly minimum wage for Schedule 1 Employers or (b) the hourly minimum compensation shown in the following schedule:

Year	*Hourly Minimum Compensation*
2016	$12.00
2017	$13.00
2018	$14.00
2019	$15.00
2020	$15.75

Effective January 1, 2021, the hourly minimum compensation paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.

B. Schedule 2 employers can meet the applicable hourly minimum compensation requirement through wages (including applicable commissions, piece-rate, and bonuses), tips and money paid by an employer towards an individual employee's medical benefits plan, provided that the Schedule 2 employer also meets the applicable hourly minimum wage requirements.

C. Effective January 1, 2025, minimum compensation will no longer be applicable as defined in this Chapter.

Section 7. A new Section 14.19.060 is added to the Seattle Municipal Code as follows:

14.19.060 Enforcement

A. Powers and Duties

1. The Department shall investigate alleged violations of this Chapter as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter and otherwise necessary and proper in the performance of the same and provided for by law.

2. The Director is authorized and directed to promulgate rules consistent with this Chapter.

B. Exercise of Rights Protected; Retaliation Prohibited

1. It shall be a violation for an 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.

2. It shall be a violation for an employer to discharge, threaten, harass, demote, penalize, or in any other manner discriminate or retaliate against any employee because the employee has exercised in good faith the rights protected under this Chapter. Such rights include but are not limited to the right to file an oral or written complaint with the Department about any employer's alleged violation of this Chapter; the right to inform his or her employer, union or similar organization, and/or legal counsel about an employer's alleged violation of this Chapter; the right to cooperate with the Department in its investigations of alleged violations of this Chapter; the right to oppose any policy, practice, or act that is unlawful under this Chapter; and the right to inform other employees of his or her potential rights under this Chapter.

3. It shall be considered a violation for an employer to communicate to a person filing a wage claim, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the person is not lawfully in the United States, 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.

C. Notice, Posting, and Records

1. Employers shall give notice to employees in English, Spanish and any other language commonly spoken by employees at the particular workplace that they are entitled to the minimum wage and minimum compensation; that retaliation against employees who exercise their rights under this Chapter is prohibited; and that each employee has the right to file a charge or bring a civil action if the minimum wage or minimum compensation as defined in this Chapter is not paid or the employee is retaliated against for engaging in an activity protected under this Chapter.

2. Employers may comply with this section by posting in a conspicuous place at any workplace or job site where any covered employee works a notice published each year by the Department informing employees of the current minimum wage and minimum compensation rates applicable in that particular workplace or jobsite and of their rights under this Chapter in English, Spanish and any other languages commonly spoken by employees at the particular workplace or job site.

3. Employers shall retain payroll records pertaining to covered employees for a period of three years documenting minimum wages and minimum compensation paid to each employee.

D. Charges and Investigation

1. The Department may investigate any violations of this Chapter. A charge alleging a violation of this Chapter should include a statement of the dates, places, and persons or entities responsible for such violation. A charge alleging a violation of this Chapter may also be filed by the Director on behalf of an aggrieved individual when the Director has reason to believe that a violation has occurred.

2. Charges filed under this Chapter must be filed within 3 years after the occurrence of the alleged violation. The applicable statute of limitations for civil actions is tolled

during the Department's investigation and any administrative enforcement proceeding under this Chapter based upon the same facts.

3. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within 20 days after the filing of the charge and shall promptly make an investigation thereof.

4. The investigation shall be directed to ascertain the facts concerning the alleged violation of this Chapter, and shall be conducted in an objective and impartial manner.

5. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, and the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the employer subpoenaed.

E. Findings of Fact and Notice of Violation.

1. The results of the investigation shall be reduced to written findings of fact, and a written determination shall be made by the Director that a violation of this Chapter has occurred. The findings of fact shall be furnished promptly to the respondent and charging or aggrieved party in the form of a notice of violation.

2. Within sixty days of a notice of violation, the Director shall confer with the parties and determine an appropriate remedy, which shall include full payment of unpaid wages due to the charging or aggrieved party under the terms of this Chapter. Such remedy shall be reduced to writing in an order of the Director.

F. Remedies

1. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil penalty in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

2. It is unlawful for any employer to willfully resist, prevent, impede or interfere with the Director in the performance of his or her duties under this Chapter. Conduct made unlawful by this section constitutes a violation and any employer who commits such a violation may be punished by a civil penalty of not less than $1,000 and not more than $5,000.

3. For a first time violation of this Chapter, the Director shall issue a warning and may assess a civil penalty of up to $500 for improper payment of minimum wage and minimum compensation as defined in this Chapter. For subsequent violations, the Director shall assess a civil penalty for improper payment of minimum wage and minimum compensation as defined in this Chapter. A civil penalty for a second time violation of this Chapter shall be not greater than $1,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. A civil penalty for a third violation of this Chapter shall not be greater than $5,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a violation of this chapter shall be $20,000 per employee.

4. Within sixty days of a notice of violation of this Chapter, the Director shall confer with the parties and determine an appropriate remedy, which shall include full payment of unpaid wages and accrued interest due to the charging or aggrieved party under the terms of this Chapter. Such remedy shall be reduced to writing in an order of the Director.

G. Appeal Period and Failure to Respond

1. An employer may appeal the Director's order by requesting a contested hearing in writing within 15 days of service. If an employer fails to appeal the Director's order within 15 days of service, the Director's order shall be final and enforceable. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.

H. Appeal Procedure and Failure to Appear

1. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. Failure to appear for a requested hearing will result in an order being entered finding that the employer cited committed the violation stated in the Director's order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

2. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying or reversing the Director's order.

Section 8. A new Section 14.19.070 is added to the Seattle Municipal Code as follows:

14.19.070 Severability

The provisions of this Chapter are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of this Chapter, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

Section 9. A new Section 14.19.080 is added to the Seattle Municipal Code as follows:

14.19.080 Other Legal Requirements

This Chapter provides minimum wage and minimum compensation requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater wages or compensation; and nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter affecting such person.

Section 10. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 2nd day of June, 2014, and signed by me in open session in authentication of its passage this 2nd day of June, 2014.

President of the City Council

Approved by me this 3 day of June, 2014.

Edward B. Murray, Mayor

Filed by me this 3rd day of June, 2014.

Monica Martinez Simmons, City Clerk

(Seal)

Brian Surratt
MO Minimum Wage 2014 FISC
May 14, 2014
Version #1

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Mayor's Office (MO)	Brian Surratt/386-4071	Jeanette Blankenship/615-0087

Legislation Title:
AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.19 to the Seattle Municipal Code; establishing minimum wage and minimum compensation rates for employees performing work in Seattle; and prescribing remedies and enforcement procedures.

Summary of the Legislation:
This legislation provides for an increase in the minimum wage in the City of Seattle to $15.00 an hour, phased in over time, beginning in 2015:

- Small employers (businesses with fewer than 500 employees) will reach a $15.00 an hour minimum wage in seven years. Also established is a temporary guaranteed minimum compensation responsibility of $15.00 an hour to be met within the first five years, which can be achieved by combining employer-paid health care contributions, consumer-paid tips, and employer-paid wages.
- Large employers (businesses with 500 or more employees, either in Seattle or nationally) will reach $15.00 per hour in three years. The wages of employees who receive health care benefits will reach $15.00 per hour in four years.

Background:
The Mayor formed an "Income Inequality Advisory Committee," a group comprised of representatives from Seattle's employer, labor, and non-profit communities to address the pressing issue of income inequality in Seattle. The committee was charged with delivering recommendations on how best to increase the minimum wage in Seattle in a way that ensures that our economy is vibrant enough and fair enough to embrace all who live and work here. The Income Inequality Advisory Committee reviewed the impact of minimum wage increases in other cities, relevant studies and other appropriate data, and hosted numerous public engagement forums, including industry-specific forums and the "Income Inequality Symposium" at Seattle University. The Income Inequality Advisory Committee concluded the following:

- Seattle's minimum wage should be raised to $15.00 per hour, the minimum wage should be phased in over time, and the first year of implementation of a phased increase of the minimum wage should begin in 2015;
- Once the minimum wage reaches $15.00 per hour it should rise in concert with the consumer price index;
- No industry sector exemptions from the $15.00 per hour minimum wage;
- Smaller businesses and non-profits would face particular challenges in implementing a higher minimum wage; and
- The minimum wage law should be accompanied by a strong enforcement and worker and

business education program.

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations:

Appropriations Notes:

An increase in City appropriations will be incurred in 2015 and subsequent years to 1) raise City employee wages that fall below $15.00 an hour following Schedule 1; 2) provide enforcement for wage compliance; and 3) provide business education. The increase in costs will be analyzed and refined through the 2015-2016 Budget development process. Appropriation increases, where necessary, will be included in the 2015 Proposed Budget.

1) The estimated 2015 impact to the City budget for City employee wage increases associated with this legislation is approximately **$200,000**. The total incremental cost to the City to bring all wages on Schedule 1 up to $15 an hour by January 1, 2017 is approximately **$1,000,000**. These estimates assume a 2.4% cost of living increase each year for City employees, which may be adjusted to actual CPI or labor negotiations, and also include associated increases in payroll taxes for FICA, Medicare and Retirement.

2) The Department of Finance and Administrative Services will incur costs related to enforcing this legislation which will be analyzed in the 2015-2016 Budget process. The final scope of the program may be impacted by the work of the Labor Standards Advisory Committee, which is currently reviewing the labor standards enforcement functions across multiple City departments.

3) Business education potential needs and associated costs incurred by the City will be analyzed through the 2015-2016 Budget process.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes. In addition to City costs, employers in the City of Seattle will have increased financial costs for employees currently earning below $15.

b) **What is the financial cost of not implementing the legislation?**
The public welfare, health, and prosperity of Seattle require wages and benefits sufficient to ensure a decent and healthy life for all Seattle workers and their families. Not implementing this legislation will delay progress in improving public welfare, health and prosperity.

c) **Does this legislation affect any departments besides the originating department?**
   - Finance and Administrative Services will incur costs related to enforcement.

- All departments with employees below $15 an hour.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?
The Income Inequality Advisory Committee analyzed numerous alternatives. This legislation implements the alternative selected by the committee.

e) Is a public hearing required for this legislation?
No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
No.

g) Does this legislation affect a piece of property?
No.

h) Other Issues: N/A.

List attachments to the fiscal note below: None.

City of Seattle
Edward B. Murray
Mayor

May 15, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill establishing new minimum wage and minimum compensation rates for Seattle workers.

Last December, I convened the "Income Inequality Advisory Committee" with representatives from Seattle's employer, labor, and non-profit communities to address what President Barack Obama has referred to as 'the defining issue of our time.' The Advisory Committee supported a framework embedded in this legislation that includes:

- Small employers (businesses with fewer than 500 employees) will reach a $15 per hour minimum wage in seven years. Also established is a temporary guaranteed minimum compensation responsibility of $15 per hour to be met within the first five years, which can be achieved by combining employer-paid health care contributions, consumer-paid tips, and employer-paid wages.
- Large employers (businesses with 500 or more employees, either in Seattle or nationally) will reach $15 per hour in three years. The wages of employees who receive health care benefits will reach $15 per hour in four years.

The legislation means a minimum wage worker in Seattle will earn at least $4 more per hour, or $6,240 more per year, than a minimum wage worker elsewhere in Washington

As you know, cities are our true laboratories of democracy. The creative energy for experimental thinking and the courage and will to try novel ways of improving our communities are all deeply ingrained in our city's DNA. With this legislation, the people of Seattle are seizing control of our own destiny and are leading the way to show how cities can choose to be affordable cities for all.

Thank you for your consideration of this legislation. Should you have questions, please contact Brian Surratt at 206-684-8591.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Office of the Mayor
Seattle City Hall, 7th Floor
600 Fourth Avenue
PO Box 94749
Seattle, Washington 98124-4749

Tel (206) 684-4000
Fax: (206) 684-5360
Hearing Impaired use the Washington Relay Service (7-1-1)
www.seattle.gov/mayor

Exhibit 2

From: Nick Hanauer <nick@secondave.com>
Sent: Saturday, May 03, 2014 11:46 AM
To: David Rolf; Gregorich, Chris; Surratt, Brian K.; Feldstein, Robert; ERIC LIU
Subject: Re: Subway

Whoops. I meant large!

From: Nick Hanauer <nick@secondave.com>
Date: Saturday, May 3, 2014 at 9:27 AM
To: David Rolf <David.Rolf@seiu775.org>, Chris Gregorich <chris.gregorich@seattle.gov>, "Surratt, Brian K." <Brian.Surratt@seattle.gov>, "Feldstein, Robert" <Robert.Feldstein@seattle.gov>, ERIC LIU <epliu@me.com>
Subject: FW: Subway

I had great convo's with Burgess and Sally Clark yesterday. Sally seems willing to move the process quickly, worries that we will be able to keep our coalition together.

Tim is super supportive but had one concern about franchise owners that I suspect will come up a lot. My response is here. I think we need to assert this more broadly.

From: Nick Hanauer <nick@secondave.com>
Date: Saturday, May 3, 2014 at 9:19 AM
To: "Burgess, Tim" <Tim.Burgess@seattle.gov>, Tim Burgess <councilmembertim@facebook.com>
Subject: Subway

Tim,

It was great talking to you yesterday. Thanks for anything you can do to move the minimum wage ordinance quickly. But I wanted to follow up with one thought and that regards the trade-offs we discussed regarding franchise owners.

I am well aware that the compromise we fashioned classified most franchise owners as **Large**. This was our intent and I believe that there are very good reasons for this.

Our effort is largely animated by our view that the radical and rising inequality that the trickle down economic theory has brought is terrible both for our economy and our democracy. The central idea, if the rich get richer, that's good for the economy and equally, if the poor get richer, that's bad for the economy, is as economically idiotic as it is morally obnoxious.

But there is a related idea that is almost as pernicious which is, that if the big get bigger, that is good for the economy, and if the small get bigger that is bad for the economy. These twin ideas and intuitions obviously serve the interests of the powerful incredibly well, but no one else.

In the piece that we wrote for the Stranger, Eric Liu and I asserted that we need to rethink the very nature of the capitalism that we want. The truth is that franchises like subway and McDonalds really are not very good for our local economy. They are economically extractive, civically corrosive and culturally dilutive. Can you think of anytime people got excited about the addition of one of these franchises to their neighborhood???

These companies have optimized their business models around paying workers poverty wages while corporate racks up huge profits and tax payers make up the difference. Our new ordinance may force them to change their practices and business models, something which I think is a great contribution to our nations economy and democracy.

To be clear, the net amount of food people in Seattle will consume will not change if we have fewer franchises. What will change is what they consume and from whom. A city dominated by independent, locally owned, unique sandwich and hamburger restaurants will be more economically, civically and culturally rich than one dominated by extractive national chains. You can't get more stuff at the Pike Place market than at a Walmart, but nobody every flew around the world to go visit a Walmart.

We live in an economy where we grant the franchise owner the massive benefits of scale they have over the local business as if these advantages were derived from God and were intrinsically just and beneficial to society. This is crazy. Why not have a local economy that grants the same benefits of scale to the local owner- who rewards our city by keeping the money here, improving the civic landscape and creating cultural value by adding something that is unique and high quality? Why should we prefer to dilute and homogenize, rather than accrete and diversify?

I realize this argument is somewhat abstract, by I do believe it is at the core of what we should be thinking about as a city and a a nation. Thanks again for everything that you do.

Exhibit 3

From: Feldstein, Robert
Sent: Monday, May 05, 2014 7:07 AM
To: Surratt, Brian K.
Subject: RE: Subway

Brian –

Don't want to start an email seminar, but am curious about below. You think worth asking or will only cause problems?

Nick (and all) -

I really appreciate this, thanks (and yes, they are classified as larger, not smaller). I like the thinking but would love some additional thinking to help think through how to answer concerns about the effect on the individual immigrant business owner who decided to open a Subway rather than a bahn mi shop.

I will admit upfront that I probably know least about franchise model so there might be big gaps that I don't understand. That's part of why I am asking for help in thinking this through. Given the franchises' history of offloading risk, it seems to me likely the individual owners will be hurt as he or she is caught between the proverbial rock (new city law) and a hard place (corporate franchise agreement limiting freedom to make necessary business choices). Subway would hardly notice the loss (With 40,000+ franchises, they must open and close shops all the time) but the owner may well face personal bankruptcy. And just asking an individual immigrant owner to renegotiate with corporate America seems unrealistic - it's not in the corporations interest to set precedent for 40,000+ other places to accommodate a few in Seattle.

If we lose franchises in Seattle, I won't be sad – for all the reasons you say. But are their ways for the cost to be born not on those franchise owners? Are they simply going to be a casualty of this transition? Are they less sympathetic or less at financial risk than I am imagining? Are there other things we can be doing?

(And to be clear, I am not looking to change the rules to allow some franchises to be small. I get the deadstop problem of treating employees of different McDonalds or Subways differently, and furthermore recognize the foundational role fast-food workers had in starting this. I am just channeling this argument so I can best understand the responses.)

If this is easier done by phone, please give me a ring at 206.681.6456

Thanks,
Robert

From: Nick Hanauer [mailto:nick@seconddave.com]
Sent: Saturday, May 03, 2014 9:21 AM
To: David Rolf; Gregorich, Chris; Surratt, Brian K.; Feldstein, Robert; ERIC LIU
Subject: FW: Subway

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Tim is super supportive but had one concern about franchise owners that I suspect will come up a lot. My response is here. I think we need to assert this more broadly.

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Date: Saturday, May 3, 2014 at 9:19 AM
To: "Burgess, Tim" <Tim.Burgess@seattle.gov>, Tim Burgess <councilmembertim@facebook.com>
Subject: Subway

Tim,

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I am well aware that the compromise we fashioned classified most franchise owners as small. This was our intent and I believe that there are very good reasons for this.

Our effort is largely animated by our view that the radical and rising inequality that the trickle down economic theory has brought is terrible both for our economy and our democracy. The central idea, if the rich get richer, that's good for the economy and equally, if the poor get richer, that's bad for the economy, is as economically idiotic as it is morally obnoxious.

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I realize this argument is somewhat abstract, by I do believe it is at the core of what we should be thinking about as a city and a a nation. Thanks again for everything that you do.

Exhibit 4

From: David Meinert <david@davidmeinert.com>
Sent: Monday, May 05, 2014 12:37 PM
To: Surratt, Brian K.
Cc: Feldstein, Robert
Subject: Re: IIAC

Let me know when. I'm in meetings about One Seattle's initiative and polling. Just so you know the room is packed and people are pissed.

Ironically, Sawant is also pissed at Rolf and Labor for manipulating the process and using this issue for goals outside of raising all workers wages. I hope you realize how much Rolf has played all of us, including you guys.

David Meinert

A PO Box 19436, Seattle WA 98109
E david@davidmeinert.com
P 206 352 6892 x300
C 206 948 6672
F 206 374 2700
t @davidmeinert

On May 5, 2014, at 10:59 AM, Surratt, Brian K. <Brian.Surratt@seattle.gov> wrote:

Yes, let's setup a time to discuss.

No, David Rolf did not have an office here.

From: David Meinert [mailto:david@davidmeinert.com]
Sent: Monday, May 05, 2014 9:18 AM
To: Surratt, Brian K.; Feldstein, Robert
Subject: IIAC

Hey you guys, I'd like to meet. The more I dig into what I 'agreed' to the more I feel we were obviously snowed by Rolf.

First, the non-profit enforcement idea is something I have to come out against. If this changes my position then so be it. It turns out this is a tactic used by SEIU in all of their new contracts to help organize. This proposal looks more and more like a bunch of ideas cobbled together by SEIU to organize rather than to raise wages in the best way for everyone. From breaking franchise agreements to outside 'education' of workers funded by the city, to getting rid of tips to lack of training wage. I have to speak out against these things. I can support the rest of the framework, and I guess most of the process. We should set up a time to discuss.

And, I will also speak out about the process. It was horrible. And I just learned that Rolf had an office on the 7th floor during this process? Is that actually true?

Exhibit 5

David Meinert
May 28 · Seattle, WA · Edited ·

I was asked to serve on the Mayor's Income Inequality Committee, and committed to work with a broad array of voices in finding a way to address income inequality locally by raising the minimum wage in Seattle. As representatives of business I entered into this in good faith, agreeing we needed to act.

Recently Mayor Murray announced a deal from the committee, said to be a compromise, claiming it would meet his goal of avoiding a costly battle at the ballot box. Much credit was given for a collaborative process that brought business together with non-profits and labor unions to craft a near consensus compromise. All nice, except none of this is true.

In fact, the process was a charade. And in the end, business isn't supporting it, and $15Now is running their initiative. So if success was broad support and no initiative, this is a failure.

At the end of the process many on the committee did agree to tentatively support the 'deal' IF the actual ordinance reflected what we agreed to. Unfortunately, the final ordinance does not reflect what the IIAC agreed to, and many important details were changed between agreements at the meetings and drafting of the final document. This sort of bad faith negotiating took place throughout the process, as the Mayor's staff, out of either incompetence or intentional dishonesty, continued to change what was agreed upon to something in draft form that reflected only what Labor leaders wanted. The final ordinance draft changed important elements of what was agreed on.

It should also be pointed out that the final tally of IIAC members supporting the framework of a deal wasn't based on compromise as much as political blackmail. In the final negotiations the Mayor's staff told the business side that we could agree to what they had put on the table (which again, wasn't what had been agreed to), or the Mayor would draft something "worse" to send to council. That's not creating a compromise or consensus. It's bullying.

Had this process been run better and more honestly, Seattle could have drafted a $15 minimum wage ordinance that both business leaders and labor leaders supported. It could have been historic. Unfortunately it's more of a mess than historic. During the process, over and over again Labor stormed out of the room, cried, yelled, and took "religious" positions - in that they made no sense but could not be compromised on. The final ordinance reflects goals of Labor leaders that go far beyond raising the minimum wage. They include breaking the franchise model to open up franchise agreements to allow for collective bargaining, getting rid of tipping, moving away from part time work, and moving people out of employee paid health plans into the State exchange. None of these are necessarily bad things, but they shouldn't have been legislated in this ordinance. Labor manipulated this process and I have lost all respect for the labor leaders involved.

So we have a messy ordinance with 4 different minimum wages, different phase in times for different businesses, a move away from standard definitions of what a business is and what an employee is, and confusing elements like "phasing out" of tips and health care benefits.

As a result of there being no tip credit for "large" businesses and the tip credit for small business phasing out, expect to see the restaurant industry in Seattle move to service charges instead of tips. Few in the full service restaurant industry will make any more money, but many servers and bartenders will make significantly less. Lay the blame for that squarely at the feet of everyone who supports this deal, Labor leaders, and the electeds who vote for it. Ironically, restaurant owners will make the same, some even more.

In the end, I am so disgusted with this process, and with the inner workings of local politics, the callous disregard for negative impacts on small business and small non profits, that I am feeling pretty done with local politics. And I hate to say it, but I'm not sure I can support candidates who also take money from SEIU, UFCW and the King County Labor Council. I'd rather give my money to the many small progressive non-profits they are willing to crush because they aren't part of their unions so none of their concern. Be skeptical and cynical as you can be about politicians, and never doubt that they are more than willing to trade good policy, policy they believe in, for donations, votes, appearances over substance, and press. And in the end, the only people who will be celebrating this ordinance are those that want these things. It's a shit ordinance. Don't even begin to think otherwise. When you read who takes credit for it in the national media, you will know who wins, and why.

It would be a good time for the Mayor and Council to read Hans Christian Anderson. This ordinance is naked.

(PS - a real compromise would have been big and small businesses all going to $15 in 3 years, with a permanent, enforceable tip credit, a health care credit, exempting micro businesses and non-profits. This would have been better for workers and for business. Could have. Should have. That was traded away.)

Grace Jurado, Katy Cooper, Michelle Boline and 118 others like this.

48 shares

Comments Omitted

Exhibit 6

May 19, 2014
Sent via email

International Franchise Association Opposes Minimum Wage Proposals That Would Unfairly Destroy Established Franchise Model

Mayor Murray and Members of the Seattle City Council:

On behalf of the International Franchise Association (IFA), I write to express our significant concerns with possible minimum wage proposals that would unfairly and unjustifiably destroy the established franchise model.

For example, the following definition contained in the Mayor's proposal is very problematic and creates unprecedented challenges for businesses across a wide range of industries operating under a franchise model:

> "Schedule 1 Employer" means all employers that employ more than 500 employees in the United States, regardless of where those employees are employed in the United States, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;

According to case law as well as state and federal statutes, franchisees are not the employees of franchisors. Likewise, franchisees' employees are not the employees of franchisors. It is the owner of an individual local franchise who is responsible for the hiring and wage decisions at his or her location. To hold otherwise, would be unprecedented, raise constitutional concerns, and would overturn basic tenets of contract law.

The Mayor's proposal further compounds the unfair treatment of franchisees, particularly those with only one or a handful of locations, by including a separate definition of non-franchised businesses:

> "Schedule 2 Employer" means all employers that employ 500 or fewer employees regardless of where those employees are employed in the United States. Schedule 2 employers do not include franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;

The perverse effect of these two definitions would be that a small franchisee with a few employees would be forced to pay higher wages than a non-franchised business with hundreds of employees. These unfortunately situated franchisees will be forced out of business due to the unfair competitive marketplace created due to this proposal.

Likewise, franchisors will no longer be able to offer new franchise locations to potential owners of single establishments. The net result will be more corporate owned and operated stores, eviscerating a business model responsible for creating small business ownership opportunities for millions of Americans.

As you consider the recent various minimum wage proposals, the IFA respectfully urges you not to disrupt the business format model that provides more than 19,000 jobs to local Seattle residents and

helps franchise owners achieve their entrepreneurial dreams, including women, minorities and veterans.

Please do not hesitate to contact me for further information or assistance.

Sincerely,

Dean Heyl
Vice President, State Government Relations,
Public Policy & Tax Counsel
International Franchise Association
1501 K Street, NW, Suite 350
Washington, DC 20005
202.662.0792
dheyl@franchise.org

The International Franchise Association is the world's oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education and advocacy, IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising.

Exhibit 7

Michael H. Seid
Managing Director

94 Mohegan Drive
West Hartford, CT 06117-1403

860-523-4257

mseid@msaworldwide.com
www.msaworldwide.com

Via Email: ed.murray@seattle.gov
council@seattle.gov
tim.burgess@seattle.gov
sally.bagshaw@seattle.gov
sally.clark@seattle.gov
jean.godden@seattle.gov
bruce.harrell@seattle.gov
nick.licata@seattle.gov
mike.obrien@seattle.gov
tom.rasmussen@seattle.gov
kshama.sawant@seattle.gov

27 May 2014

The Honorable Ed Murray
Mayor, City of Seattle
The Honorable Tim Burgess
Council President, City of Seattle
Member of the Seattle City Council
600 4th Avenue
Seattle, WA 98104-1850

Re: "$15 Per Hour Minimum Wage Legislation'

Dear Mayor Murray, Councilman Burgess and the Members of the Seattle City Council:

I wish to express my concern and strong opposition to the $15.00 per hour minimum wage legislation that has been proposed for the City of Seattle and which the Seattle City Council is currently considering.

By way of background, I am founder and Managing Director of MSA Worldwide. MSA is considered the nation's leading franchise advisory firm. Our primary clients range from small to mid-sized emerging companies that are either considering franchising for the first time to some of the world's largest franchised and non-franchised brands, many with locations in the City of Seattle and throughout the State of Washington.

In addition to my commercial endeavors, I am also a Social Franchisor that supports a growing network of over 140 franchised medical clinics serving at the "Bottom of the Pyramid" ("BOP") in East Africa. CFW and OFW clinics operate primarily in Kenya and Rwanda to provide basic quality healthcare and authentic drugs to the poor in underserved peri-urban areas.

Social Franchising is the application of the techniques and technology found in Business Format Franchising to achieve societal benefits. Social Franchisors are generally not for profit entities (NGOs). However, their franchisees are small business owners that operate their individually owned businesses to support their families. These are highly subsidized franchise entities because unlike traditional franchisees, their customers can often not afford the $1.75 it takes to treat their child's malaria or other common illness. One of our brand standards is that caring for the patient comes before their ability to pay. But other than the environment our franchisees work in and the level of poverty of our clients, the local nurses that own their clinics and work every day in their small businesses are identical to the

franchisees that serve you products and services in the City of Seattle. They make their living and support their families by their hard work in their independently owned businesses.

CFW also supports the efforts of USAID by providing them with advice in establishing non-branded medical clinics in the Congo. The technology used in establishing and supporting small businesses by franchisors drives the product and service quality and excellence families in the Congo are entitled to receive, and in my opinion with the dignity they deserve. My firm's practice also is engaged elsewhere at the BOP including in assisting in the development of a woman's reproductive health system in Ghana and to the African Women's Entrepreneurship Program (AWEP), an organization of more than 35,000 African businesswomen that was launched with the on-hands assistance of then Secretary Clinton. The purpose of AWEP is to provide African women with the tools and opportunities to accelerate the growth of their businesses, become leaders in their communities and drive social and economic progress in Africa. Several years ago the International Franchise Association established its Social Sector Taskforce whose purpose is to improve the quality of life for the poor worldwide and I am privileged to be the chair of the IFA's initiative.

I co-authored *Franchising for Dummies*, with the late Dave Thomas, Founder of Wendy's International, who participated in writing the book's first edition with me. I am privileged to be the first professional ever directly elected to the Board of Directors of the International Franchise Association and the first recipient of the Hall of Fame Award from Franchise Update Media Publications.

I am fortunate. I learned much of my craft from my parents, second generation Americans, who were small business owners in New York and worked harder than anyone I have ever met (other than my friend's parents) to ensure that their children and through them their great grandchildren had the opportunities their own parents worked so very hard for them to first have. I am the product of small business ownership. I am as common an American as can be found. My family's story is no different than any other family owned and operated small business including those found in the City of Seattle today. The only difference is that my grandparents and my parents did not have the advantage of being able to have the guidance and support that today's small business owner can gain by joining a strong branded franchise system and therefore they had to go it alone.

I have a seasoned track record, in the United States and internationally, of focusing in on solving societal needs using the technology found in franchising. **I am not an alarmist nor do I exaggerate my claims to make a point. While I take no position at this time on the merits of your decision to enact a living wage requirement on businesses in the City of Seattle, doing so in the way that is proposed, which discriminates against a large class of small independent business owners merely because they have invested in opening their businesses under a brand name, is unfair to those individuals and will be counter-productive to the intended purpose of this proposed minimum wage increase, as further discussed below.**

I have reviewed the objections to the proposed minimum wage legislation that were provided by the International Franchise Association and others and I share their concerns. Based upon my extensive experience in franchising in the United States as well as internationally, I was surprised by the unprecedented reach of this proposed legislation and in its treatment of franchisees in your city. I know of no city, state, nor indeed any country that has taken the approach being considered in this legislation.

This proposed legislation effectively creates a new separate class of employer in the City of Seattle by singling out franchisees. It transforms the beneficial purpose that franchising provides to these franchisees into a negative as franchisees will be unable to compete with similarly situated non-branded independently owned businesses. In the process it will have a significantly negative impact on the creation of economic opportunity and jobs for the citizens of Seattle as well as adversely effect consumers. Because of the discriminating treatment of franchisees under this proposed law, the high

quality branded products and services offered by franchise system will slowly begin to be withdrawn from the Seattle marketplace. Singling out franchisees for this negative treatment in the City of Seattle will effectively make it economically impossible to own and operate a franchise business within its borders.

Franchising's roots go back to before our nation's independence with the establishment of printing franchises by Benjamin Franklin starting in 1731. Business Format Franchising is of considerable importance to the economic development of the United States, including the City of Seattle and throughout the State of Washington. Under a franchise relationship, franchisees are able to establish independently owned businesses that enable hard working entrepreneurs to obtain the Great American Dream of business ownership. The stability and proven capability of franchising as an investment vehicle has enabled thousands of Seattle's residents to establish businesses that care for themselves and their families and create thousands of jobs in your city. Franchising and the City of Seattle share a very long and mutually beneficial relationship

According to the International Franchise Association's well-documented study, the franchised businesses in Seattle collectively employ more than 19,000 individuals. Hundreds of branded franchise systems are represented in your city today. **The selective treatment of franchisees in the proposed legislation effectively mans that they will no longer be allowed to compete effectively and transforms the very nature of franchising by converting a beneficial license into a localized penalty.** By penalizing a franchisee because they joined a system of scale or a brand that has the capability of growth effectively establishes a form of co-employer relationship measured by the number of persons the entire franchise system employ nationwide. It fails to understand that franchisees are no different than any other small business owner that they independently own and operate and invest in their small businesses. In doing so it creates a new class of business ownership in the city deprived of the ability to compete with other similarly situated small business.

Through its actions, the City of Seattle will harm small business people simply because they chose to be governed by the brand promise and quality standards of a branded system and, for no other apparent reason. It is the delivery on a franchisor's brand promise and quality standards that the citizens of Seattle have come to depend upon in their daily life and that are available because of franchisee ownership of these small businesses.

I noted that the Fiscal Notes for Non-Capital Projects, that accompanies the proposed legislation, makes the claim that this proposed act will not affect a "piece of property", and that is not true. The proposed legislation seriously impacts the intellectual property of franchisors and franchisees in Seattle. **There is significant case law that real property and intellectual property are to be treated identically under the Taking Clause of the United States Constitution and therefore the negative assertion in the Fiscal Notes is factually incorrect.** In addition to the very real economic harm this proposed legislation causes to franchisees in Seattle, it also creates legal and economic risk for the City of Seattle under the law, including the Constitutions of the United States and that of the State of Washington.

In the process of creating sustainable opportunities for small business owners through their investment in a supported and branded business opportunity, franchising has provided the consumer in Seattle with access to consistent quality products and services, provided in a safe manner. The effect of this proposed legislation will be the elimination of the ability for individuals to seek ownership of small businesses in branded and supported systems because franchisors will be forced to begin withdrawing their branded locations and the opportunity for new small business creation, over time, from the city. This bill will impact more than 120 industries that bring opportunities for the ownership of job creating businesses in Seattle and will lessen the quality of life for consumers as their access to these branded products and services will no doubt begin to decline.

Franchising is one of the great engines of job creation in the United States and Washington State, including the City of Seattle. It has a proven track record as the nation's most prolific resource for training in management and entrepreneurial skills. Franchising has become the place where young people and often disadvantages residents find their first opportunity to join the labor force. Many of the senior executives of public companies began their career working in franchisee owned businesses. I would expect that some of the members of the Seattle City Council also began their working careers working in a franchisee owned business.

Because of the standards and consistent methods of operations inherent in franchise systems, the local businesses that own and operate in Seattle are a terrific place for your residents to work as it teaches them skills that will benefit them for a lifetime. Indeed, through an initiative started by the International Franchise Association, led and resourced by its President and CEO Steve Caldeira and, with the active support of First Lady Michelle Obama, franchising has created more than 150,000 jobs in under two years for our nation's heroes as they return to civilian life, many of those jobs in the City of Seattle.

By the very nature of the franchise relationship, each franchisee is an independently owned and operated business. Each franchisee manages and operates their business on a day-to-day basis to a franchisor's brand standards. Franchisees make their own human resource decisions on who to hire, how many people to hire, the benefits they offer and how much each of them can afford to pay their staff, just like any other small independent business owner. Franchisees are merely licensees of the franchisor's brands and methods of doing business and that is their sole difference from other independently owned small businesses in Seattle. Even though franchisors share a common brand with their franchisees, franchisors are not owners of their franchisee's independent businesses and do not share in their profits or their losses. Franchisees in Seattle should not be penalized or discriminated against simply because they chose the benefits of operating a branded business as part of a franchise network.

The proposed bill apparently fails to understand the licensing relationship between a franchisor and franchisee and makes the assumption that the licensor and licensee have some collective control over each other's revenue, expenses and in some way share in each other's profitability.

Franchisees are small business owners. They independently invest in their businesses and pay the operating costs of their businesses, as would any other small business owner including but not limited to rent, wages, taxes and debt service and no other party shares in these small business obligations. As licensees, franchising generally pay a continuing licensing fee for the use of the franchisor's brand and intellectual property.

The majority of franchisees finance their investments in their businesses by incurring debt. Frequently their seed capital is raised by taking a second mortgage on their homes or by selling or pledging other assets to secure the necessary down payment local banks require. This is no different from other independently owned business in the City of Seattle. Elevating the cost of doing business for one class of independent businesses over another class of independently owned business effectively makes those targeted small businesses non-competitive and is patently unfair and unwise.

Franchisors structure the financial aspects of their franchise offering based upon the economics of the underlying profitability of the business and the environment in which the business operates. When selecting markets in which to expand, franchisors select markets that allow for consistent, replicable and sustainable growth and chose markets that do not cause risk to their brands or the sustainability of their franchisee's operations. **Should this proposed legislation pass as written to include a higher**

minimum wage for franchisees than for all other independent businesses of the same size, the City of Seattle will effectively no longer be a viable place for franchisors or franchisees to operate.

Because of this proposed legislation my firm has already alerted some of our clients, and others, to its impact. We have advised them to hold off on any further expansion into Seattle until we know the outcome of your vote. Should the Seattle City Council pass this proposed legislation I can assure you that franchisors will no longer be able to support expansion into Seattle and won't. The decision by franchisors to bypass Seattle will not be made because they don't want to expand in your city of don't see the attractiveness of doing business in the City of Seattle, but because the risk and anti-competitive nature of this proposed legislation will create excessive costs for franchisees wishing to do business and those additional costs will be far too great to make it acceptable for them to do so. **As written this proposed legislation will statutorily not allow franchising to exist in Seattle because franchisees will not be able to compete with other independent competitors.**

I respectfully ask you not to discriminate against the hard working independently owned franchisees in the City of Seattle.

Please do not hesitate to contact me for additional information or to discuss my opinions.

Sincerely,

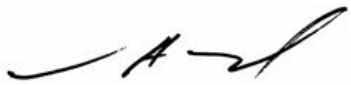

Exhibit 8

MSA WORLDWIDE
Strategic Advice and Guidance Based on Real World Experience

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31 May 2014

The Honorable Ed Murray
Mayor, City of Seattle
Member of the Seattle City Council
600 4th Avenue
Seattle, WA 98104-1850

Re: "$15 Per Hour Minimum Wage Legislation'

Dear Mayor Murray and the Members of the Seattle City Council:

While I was unable to attend the Seattle City Council meetings this week, I was able to follow the discussions and the votes live on the Internet. Given the tone and the tenor of the discussions, and the assembled audiences deportment, I was not genuinely surprised that the impact on small business franchisees was not even considered during the debate.

I again wish to express my strong opposition to this measure and the discrimination against a class of small business owners simply because of their branded affiliation with franchisors, and for no other reason. **By its actions, the City of Seattle is statutorily denying franchisees the right to exist in Seattle because under this law franchisees, that by all legal and other definitions are small business owners, will not be allowed to compete with other independently owned and operated businesses.** Singling out and punishing a class of independent business owners merely because those independently owned businesses chose to licenses their brand from another company is not only unfair and exceedingly unjust, but I expect will also prove to be both unworkable and unlawful.

From a practical enforcement of this discriminatory act, I failed to see in the legislation any mechanism for the City of Seattle to measure the employment of franchise systems nationwide or to set aside the necessary and substantial dollars such audits and enforcement would require on a continual year-to-year basis.

As each franchisee nationwide, regardless of the franchise system is independently owned and operated, franchisees do not report, at any level, the types and number of employees to the franchisors whom they license their brand and operating system from. There is no reason that they would and contractually, most franchisors would not have the right to require these franchisees to do so.

While specifying that a franchisee would not be considered a small business should the franchisor from which it licenses its brand have in its own operations or throughout its franchised network 500 or more employees, this legislation provides absolutely no guidepost for ascertaining how that count should take place, be measured or funded. For example, are part time employees that work 5 hours a week equivalent to a 40-hour a week employee under the law? Since in many industries it is common to engage independent contractors, because of valid and legally justifiable reasons, do those independent contractors count as well? Who validates the distinction between an employee and an independent contractor under the law?

Who will fund the immense and continual cost of this undertaking as franchise systems are mostly small enterprises themselves, most with less than 100 locations. It is important to recognize that all franchise systems continually add and close locations on a continual basis, and also that independently owned franchisee operators nationwide continually add and subtract employees. What mechanism is proposed under the law for funding the cost of conducting this initial audit nationwide and the continual cost of auditing and enforcing the local City of Seattle requirements on an ongoing basis?

There is nothing under the law that gives an independent small business franchisee in Seattle the right to contractually obligate its franchisor to invest in conducting the required nationwide audit and follow up audits and enforcement. There is also nothing under the law that would compel an out of state independently owned franchisee from providing the necessary information to its franchisor in order for that franchisor to meet the requirements of the local Seattle law, should it choose to do so. Franchisors have no contractual right to require its franchisees nationwide to provide them with the information required by this local law and I would strongly suggest that most franchisees and franchisors would not have the willingness or capability to do so.

Even should the City of Seattle try to legally require franchisors to conduct such audits, does anyone on the City Council believe that any Federal Court will compel franchisees outside of the City of Seattle to disregard the express terms of their written franchise agreement and provide this information to their franchisors so that the franchisor could comply with local Seattle law? The likelihood that any Federal Court will overturn centuries of Constitutional law to meet a local Seattle law makes this proposition meaningless.

For the sake of argument, suppose that ultimately the United States Court for the Ninth Circuit agrees that you have such national authority (highly unlikely) would you truly expect the Supreme Court to go along with that decision? But assuming they did, would you not expect any court to require the City of Seattle have the necessary resources to indemnify the franchisor and fund the anticipated and unanticipated costs related to the initial and continual audit and enforcement, vicarious liability and co-employment claims and payroll and other taxes which their meeting the requirements of the law will most likely create nationwide?

Under the Ordinance, I understand that the Seattle Department of Finance and Administrative Services may investigate suspected violations, issue subpoenas, and impose civil penalties as high as $20,000 per employee. If the law is found to be unworkable because it violates Constitutional or other challenges and fails to protect the contractual and other rights of franchisees and franchisors outside of the City of Seattle, under what basis would the Seattle Department of Finance and Administrative services be able to enforce any civil penalties on independently owned businesses in Seattle because of the failure of unaffiliated out of state independently owned businesses to comply with the law. Compliance with the law by businesses outside of the City of Seattle will be a required element necessary for local small business franchisees to comply and, was not even discussed by the City Council or included in the bill.

My firm today, as I intimated in my letter dated 27 May 2014, began to alert our clients and have encouraged others to alert their clients to hold off on any further expansion into Seattle. As I mentioned in my previous letter this action is not because I do not see the attractiveness of doing business in Seattle. My reasons are enumerated above and in my prior letter. The discriminatory manner in way the City of Seattle will treat franchisees and make them non-competitive with all other small independently owned businesses will simply make it impossible for these small business owners to do business in your city. I have also suggested in my letter to clients and others that where possible, they consider assisting existing franchisees to relocate outside of the jurisdiction of this law to protect their business interests prior to the enforcement date in April 2015.

I again respectfully ask you to reconsider your actions and not to discriminate against the hard working independently owned franchisees in the City of Seattle. Please do not hesitate to contact me for additional information or to discuss my opinions.

Sincerely,

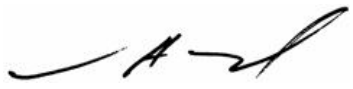

Exhibit 9

The Seattle Times
Winner of Nine Pulitzer Prizes

Editorials

Originally published May 30, 2014 at 3:41 PM | Page modified June 2, 2014 at 11:56 AM

Editorial: Redefine franchises under Seattle's minimum-wage proposal

The Seattle $15 minimum wage proposal punishes locally-owned franchises in a wrongheaded pursuit of fast food CEOs, who undoubtedly couldn't give a rip.

Seattle Times Editorial

WHEN the City Council votes Monday, as expected, to enact a historic $15 minimum wage, expect McDonald's Chief Executive Don Thompson to be raised at least once as the rapacious face of income inequality.

He is an easy political target. Thompson made $9.5 million last year, allowing him to earn more in one day than the average McDonald's worker made in 1.4 years.

To level such inequality, the Seattle minimum-wage proposal, as it now stands, defines nearly all franchises as big businesses, giving them only three to four years to raise all workers wages to $15 an hour. Small businesses (defined as fewer than 500 employees) get up to seven years, cushioning financial blow and offering them a temporary advantage over competitors.

The targeting of Thompson by $15 activists is jarring because he, undoubtedly, couldn't give a rip about Seattle's radical wage experiment. He certainly isn't going to pay.

Who will pay? The 1,700-some independent franchisees operating in the City of Seattle. In addition to fast-food franchises, these are businesses offering in-home care to elders and people with disabilities, pet groomers, barbers and the like.

And contrary to the rhetoric from the $15 wage movement, these businesses are not arms of corporations. Franchiseshave their own tax ID numbers and payroll — they are independent business units separate from the franchiser. Typical agreements offer franchises a brand, a business model, some marketing and bulk buying power. In exchange, franchises pay about 4 to 7

percent of their gross profits back to the franchiser.

If the proposal passes as is, Seattle's definition of a franchise would put it at odds with state and federal law. It effectively discriminates against a business model — franchises — by giving non-franchises a slower phase-in.

"What's happening in Seattle is unprecedented," said Gary Duvall, a Seattle business attorney who represents franchises. He said franchises would "absolutely" sue Seattle if the definition of franchises remains as proposed, and the lawsuit, based on precedent elsewhere, is "very likely" to be successful.

The politics of this decision is clear. Seattle is the first city to move swiftly toward a $15 minimum wage, but not the last. National labor activists will export the model created here. Treating franchises as what they are — small businesses — would eliminate the opportunity to burn Thompson in rhetorical effigy elsewhere.

City Council members, and the mayor, should stop allowing themselves to be so willingly manipulated by activists, should head-off an inevitable lawsuit and should adopt some rationality. The council should strike the definition of franchises.

Editorial board members are editorial page editor Kate Riley, Frank A. Blethen, Ryan Blethen, Sharon Pian Chan, Lance Dickie, Jonathan Martin, Erik Smith, Thanh Tan, William K. Blethen (emeritus) and Robert C. Blethen (emeritus).

Exhibit 10

From: Nick Hanauer <nick@secondave.com>
Sent: Saturday, May 31, 2014 4:54 PM
To: Rasmussen, Tom; Clark, Sally; 'Sally Bagshaw'; Harrell, Bruce; Sawant, Kshama; O'Brien, Mike; Godden, Jean; Tim Burgess; Licata, Nick
Cc: David Rolf; Surratt, Brian K.; Feldstein, Robert
Subject: Franchises and the Seattle Times

Council Members,

The Seattle Times is running an editorial arguing that franchises are the same as local small businesses and that they should be treated as such under the new $15 proposal.

This is as ridiculous as arguing that a platoon of United States Navy Seals is the same as a platoon of barefoot soldiers from the Congo. There may be the same number of people involved on both sides, but clearly one side has benefitted from scale in a way that gives them a massive and unfair advantage. It is possible the guys from the Congo could win in a conflict, but the chances of that approaches zero.

In the same way, franchises dominate their niches, not because they are intrinsically better, but mostly because they benefit massively from the scale of their parent operations. Cheaper ingredients. Cheaper equipment. Better lease terms. Better training. Better and more advertising. Well known brand. etc, etc, etc.

There is nothing illegal about this. But it is ludicrous for a business that benefits hugely from size and scale to claim they are the same as a small locally owned business and should be treated the same. It is untrue and dishonest.

Remember that the core of the issue here is what kind of economy we want and deserve in our city. The issue extends well past wages to the implication that wages have on the fundamental nature of our economy. Our goal should be to make Seattle better, in every way.

The hard truth is, that these national franchises like McDonalds, or Burger King or KFC, or Subway, simply are not that beneficial to our city. First, these organizations are consistently at the low end of the scale in terms of paying decently and offering benefits. Not all small, locally owned companies take great care of their workers, but none of the national chains do. It turns out to be far easier to treat workers poorly if you do not know them, and these giant profitable corporations have found ways to optimize their business models around paying poverty wages and avoiding benefits. You can call this "the market" or you can call this "not giving a shit about your people". But the result is the same.

There is no law of the universe that says that we should optimize our economy for giant chains that suck profit out of our city, offer no civic benefit to the community, and dilute the cultural richness of our neighborhoods too. If you think that is harsh, please tell me the last time you emailed friends about the addition of one of these companies to your neighborhood.

I have nothing against these companies. They have a right to operate. But our city has no obligation to continue policies that so obviously advantage them and disadvantage the local businesses that benefit our city and it's

citizens more. Markets are man made constructs. People who defend the current arrangements are usually advantaged by them. Don't be persuaded otherwise.

Exhibit 11

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **TRANSCRIPT**

The following is a statement of Kshama Sawant, Member of the Seattle City Council, at the Council's public hearing on May 22, 2014. The video of the hearing is available at http://www.seattlechannel.org/videos/video.asp?ID=2161440. Councilmember Sawant's statement begins at 92:33 and ends at 96:22.

TRANSCRIPT

"Thank you, Councilmember Clark. So, I think we started this by starting to talk about the point that Dan and Patricia included about microbusinesses and then, you know, we're talking about franchisees obviously, so it's related, but then firstly on the timeline phase-in for

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(202) 234-0090

microbusinesses. I think the microbusinesses, especially the microbusinesses of color that the API Chaya representative talked about, are the very businesses that did not really get a seat at the table. And they are the ones who depend not only on a slightly longer phase-in, but they are also situated in neighborhoods where they don't succeed because the people, the customer base that they have, don't have much money to spend, so it's a double-edged sword. So we have to remember that if we are trying to help these businesses, having a phase-in that is longer than what is already there in the draft, which is 11 years, is just not a recipe for success. If we are trying to propose creating a micro-employer category, then it should be on the basis that whatever longest we have, that applies to the microbusinesses and the other, larger businesses go quicker, not that we make a longer phase-in. The phase-in is already too long. And as far as the definition, Councilmember Rasmussen's question is, you know, well taken, you know, how did that come about? Obviously that was the result of what was acceptable to the two sides on the IIAC, you know, the subcommittee that finally discuss it, but I think the fact that basically we have 250 employees is a guideline. 500 is a very, very high bar—or low bar—depending on whether you are labor or business, for defining a small business. I can tell you I haven't met a single worker, and in fact I have met several businesses, who don't think 500 employees is any kind of base line for small businesses. Small businesses, when people think about small businesses, they are much smaller businesses, so I think it is already quite high. The last point I'll make is, you know, as far as microbusinesses are concerned, I think we, the city needs to look at other comprehensive legislation to help them out, especially improving the economics of the south end and so on.

"The last thing is on franchisees. I have a really good, informative handout that is was put together by Good Jobs Seattle, and thank you for doing that. And this does not have information on Subway, but it is a guideline for us. It's important, before we get lost into this false idea that franchisees are somehow struggling businesses, we should look at the evidence here, which compiles McDonald's, Burger King, and Wendy's owners in Seattle. Just a couple of points I'll pull out—you know, we'll put this up on our website again. Just six companies own every franchised big burger chain outlet in Seattle, and those six companies own a total of 236 locations all across the country. These are not small businesses. And a McDonald's franchisee requirement is $750,000 of personal wealth, not borrowed money, and $45,000 franchisee fee, 40% of the total cost to open a new restaurant must be paid in cash. Now, yes it's true that the McDonalds headquarters, corporate headquarters, takes away the lion's share of the profits, but in order to be a franchisee, you have to be very, very wealthy. Just a small business person of color from Rainier Beach is not going to be able to afford to open a franchise outlet.

"And lastly, I will say that we are here thanks to fast food workers who fought all over the country. If we start making this loophole, where fast food and you know franchisees are going to be considered as small businesses, we're going to be selling out the very people who fought for this and brought us here."

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Exhibit 12

Stand strong against corporate loopholes

It is truly historic that Seattle is getting close to a $15/hour legislation – a testament to the success that can be achieved through working class fightback.

During yesterday's Select Committee on Minimum Wage, the Seattle City Council began discussing in detail the draft legislation and potential amendments. (Click here to watch the full meeting.)

Earlier this month, I wrote to explain some of my concerns with the draft. Unfortunately, since it was introduced, big business has been using council negotiations to erode the draft proposal even further, with discussion focusing around franchises, training wages and tip credit. Below are some of the resources that I have distributed to other Councilmembers to encourage an informed discussion on these important issues.

Franchises are not small businesses

The International Franchise Association (IFA) recently wrote Councilmembers to lament the fact that $15/hr would "destroy the established franchise model." At hearings, specific franchises like Subway have rolled out owners in an attempt to present the model as small and family owned. This is a deliberate campaign of misinformation. As I mentioned during the meeting, a Good Jobs Seattle study has demonstrated the fact that Seattle franchises are not small businesses (PDF).

Franchise owners are not people of limited means, and their workers face very different circumstances (PDF). Fast-food workers are systematically underemployed, working only 24 hours a week on national average. Even here in Seattle, "a 24-hour-a-week worker making the Seattle median fast-food wage of $9.50 would earn only $11,856 in a year." These employees are denied regular schedules and have to work second and sometimes even third jobs to make due. It's clear that the current franchise model is rigged against workers.

Working Washington's new study, "Franchisors and the Fast Food Industry" (PDF), explains in further detail how the franchise system systematically undermines workers for the benefit of those at the top. This is a crisis which affects us all. Demos has produced a study, "Fast Food Failure" (PDF), which explores how inequity in the fast food sector undermines the economy

itself.

There is no such thing as a just training wage

With training wages being introduced as a possible part of the minimum wage legislation, I think it is important to understand the arguments being put forward.

The National Employment Law Project (NELP) explains the lies which are used to justify a "Training Wage" loophole. Simply stated, raising the minimum wage does not cost teen jobs, and a training wage incentives employers to operate on a model of higher turnover. Check out this document (PDF) for more background.

Who are Seattle's Tipped Workers?

Puget Sound Sage recently asked, "Who are Seattle's Tipped Workers?" (PDF). I encourage you to find out, and then read "A Woman's case for rejecting a 'Tip Credit" by Anh Tran, my former campaign staff member.

Moving forward

As we all know, the fight for a strong $15/hour minimum wage in Seattle is not over. Every day, business continues to lobby to add training wages, to include a permanent tip credit and to extend the phase-in even further. We need you to continue to organize, mobilize and let Councilmembers know that if they fail to produce a strong $15 for workers, you will make sure that we get one by other means.

The Council could start voting on amendments as early as the next meeting. It will take place at 9:30am on Thursday, 5/29, in the Council chambers. Please come early and sign up to speak about how these loopholes will hurt the community.

Posted: May 23rd, 2014 under Minimum Wage, Weekly Update
Tags: Minimum Wage

- Categories
  - Anti-Racism (RSS)
  - Campaign Finance (RSS)
  - CEO Pay (RSS)
  - Environment (RSS)
  - Immigrant Rights (RSS)
  - Income Inequality (RSS)
  - Minimum Wage (RSS)
  - Police (RSS)
  - Transit (RSS)
  - Uncategorized (RSS)
  - Weekly Update (RSS)
  - Workers Solidarity (RSS)
- Search
- Recent Posts

Exhibit 13

- Introduction and Referral
- City Council Agendas
- City Council Minutes
- Council Rules
- Budget Process

Seattle City Council Minutes

Information retrieved July 31, 2014 4:24 PM

Journal of the Proceedings of the Seattle City Council Monday, June 2, 2014

A. CALL TO ORDER

The City Council of The City of Seattle met in the Council Chamber in City Hall in Seattle, Washington, on Monday, June 2, 2014, pursuant to the provisions of the City Charter. The meeting was called to order at 2:00 p.m., with Council President Burgess presiding.

B. ROLL CALL

On roll call the following members were: Present: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Sawant - 8 Absent: Rasmussen (late arrival) - 1.

C. INTRODUCTION AND REFERRAL CALENDAR

Motion was made, duly seconded and carried, to adopt the proposed Introduction and Referral Calendar.

COUNCIL BILLS:

BY LICATA:

Council Bill No. 118109, Appropriating money to pay certain audited claims and ordering the payment thereof.

Referred to Full Council.

Council Bill No. 118110, Relating to a lease agreement for office space; authorizing the Director of Finance and Administrative Services to enter into a lease agreement with 720 3rd Avenue Partners, L.L.C. for office space in the Pacific Building, for use by the Office of Professional Accountability; amending Ordinance 124349 that adopted the 2014 Budget to increase appropriations to provide for necessary costs and expenses related to preparing the leased premises for City use and occupancy; and ratifying and confirming certain prior acts; all by a three-fourths vote of the City Council.

Referred to Finance and Culture Committee.

BY O'BRIEN:

Council Bill No. 118111, Relating to land use and zoning, amending the Official Land Use Map at pages 133 and 145 to rezone land in the North Rainier Hub Urban Village and expand the boundaries of the Mount Baker Station Area Overlay District; and amending Sections 23.48.004, 23.48.009, 23.48.011, 23.48.012, 23.48.014, 23.48.024, 23.48.032, 23.48.034, 23.58A.040, and 23.84A.048 and adding a new section 23.61.018 to describe bonus provisions for additional floor area within the Mount Baker Station Area Overlay District, implement standards for a Mount Baker Overlay District Special Standards Area, modify maximum parking limit requirements, change the definition of "Zone, residential" to include SM\R, and modify and add maps for Chapter 23.48.

Referred to Planning, Land Use, and Sustainability Committee.

BY RASMUSSEN:

Council Bill No. 118112, Related to the Seattle Department of Transportation; lifting a budget proviso imposed on Transportation Operating Fund, Budget Control Level: Mobility- Capital, for the Pay Station Capital Improvement Project (TC366350) as provided in Ordinance 124349, which adopted the 2014 Budget.

Referred to Transportation Committee.

Council Bill No. 118113, Granting Puget Sound Bike Share, d.b.a. Pronto! Emerald City Cycle Share, permission to install, maintain, and operate a bike-share program in public places located within: Major Institution Overlay Districts, designated Urban Centers, Urban Villages, and all commercially- or industrially-zoned areas in the City of Seattle; for a ten- year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

Referred to Transportation Committee.

BY BURGESS; CO-SPONSORS: BAGSHAW, GODDEN, HARRELL, RASMUSSEN, SAWANT:

Council Bill No. 118114, Relating to funding and providing preschool services for Seattle children; requesting that a special election be held concurrent with the November 4, 2014 general election for submission to the qualified electors of the City of a proposition to lift the limit on regular property taxes under Chapter 84.55 RCW and authorize the City to levy additional taxes for up to four years for the purpose of providing accessible high-quality preschool services for Seattle children designed to improve their readiness for school and to support their subsequent academic achievement; adopting the Seattle Preschool Program Action Plan; requiring the adoption of an Implementation Plan by the City Council; authorizing creation of a new subfund; directing the application of levy proceeds; establishing eligibility requirements for providers; creating an oversight committee; authorizing implementing agreements for this levy lid lift commonly known as the Seattle Preschool Program Levy; providing for the facilitation of communication between the City and affected groups; providing for a partnership agreement with Seattle School District No. 1; requiring annual progress reports; proposing a ballot title; and ratifying and confirming certain prior acts.

Referred to Committee on Preschool for All Committee.

BY BURGESS:

Council Bill No. 118115, Relating to City employment, to be known as the 2014 Seattle City Light General Manager/Chief Executive Officer Pay Zone Ordinance; adjusting the pay zone structure for the City's SCL GM/CEO Compensation Program for the year 2014.

Referred to Education and Governance Committee.

Council Bill No. 118116, Relating to City employment; establishing a compensation program for the Seattle Police Chief; specifying provisions for the administration of said compensation program; providing for reimbursement of relocation expenses for the 2014 Seattle Police Chief appointee; authorizing a severance agreement with the 2014 Seattle Police Chief appointee; and ratifying and confirming prior acts.

Referred to Education and Governance Committee.

BY RASMUSSEN:

Council Bill No. 118117, Relating to the construction of a new Fire Station 32; transferring jurisdiction of a portion of Lots 1 through 4, Block 1, Norris' Addition to West Seattle from the Department of Finance and Administrative Services to the Seattle Department of Transportation and dedicating the property for alley purposes; and laying off, opening, widening, extending, and establishing the transferred property as street right of way.

Referred to Transportation Committee.

BY SAWANT:

Council Bill No. 118118, Relating to the City Light Department, authorizing the acceptance of the Statutory Warranty Deed for the "Guse Property" in Skagit County, Washington, placing said land under the jurisdiction of the City Light Department, and ratifying and confirming certain prior acts.

Referred to Energy Committee.

RESOLUTIONS:

BY LICATA:

Resolution No. 31525, Adopting revised investment policies for the City of Seattle and superseding Resolution 30346.

Referred to Finance and Culture Committee.

BY RASMUSSEN:

Resolution No. 31526, Relating to the Center City Connector; adopting the Center City Connector Transit Study Locally Preferred Alternative (LPA); and endorsing efforts to pursue federal funding for the Center City Connector project.

Referred to Transportation Committee.

BY BURGESS; CO-SPONSORS: BAGSHAW, GODDEN, HARRELL, RASMUSSEN, SAWANT:

Resolution No. 31527, Relating to the Seattle Preschool Program; outlining the elements to be addressed in a subsequent Seattle Preschool Program Implementation Plan, which shall be adopted by ordinance prior to the implementation of a Seattle Preschool Program.

Referred to Committee on Preschool for All Committee.

CLERK FILES:

BY LICATA:

Clerk File No. 313819, Reappointment of DeVon Manier as member, Seattle Music Commission, for a term of confirmation to May 1, 2016.

Referred to Finance and Culture Committee.

Clerk File No. 313820, Reappointment of Jon Stone as member, Seattle Music Commission, for a term of confirmation to May 1, 2016.

Referred to Finance and Culture Committee.

Clerk File No. 313821, Reappointment of Holly Hinton as member, Seattle Music Commission, for a term of confirmation to May 1, 2016.

Referred to Finance and Culture Committee.

Clerk File No. 313822, Reappointment of Ben London as member, Seattle Music Commission, for a term of confirmation to May 1, 2016.

Referred to Finance and Culture Committee.

Clerk File No. 313823, Appointment of Patricia Isacson Sabee as member, Seattle Music Commission, for a term of confirmation to June 5, 2017.

Referred to Finance and Culture Committee.

BY HARRELL:

Clerk File No. 313824, Appointment and Oath of Office of Kathleen O'Toole as Seattle Police Chief.

Referred to Public Safety, Civil Rights, and Technology Committee.

Clerk File No. 313826, Appointment of Jason Johanson as member, Seattle Fire Code Advisory Board, for a term of confirmation to May 27, 2017.

Referred to Public Safety, Civil Rights, and Technology Committee.

Clerk File No. 313827, Appointment of Scott Peterson as member, Seattle Fire Code Advisory Board, for a term of confirmation to May 27, 2017.

Referred to Public Safety, Civil Rights, and Technology Committee.

D. APPROVAL OF AGENDA

Motion was made, duly seconded and carried, to adopt the proposed Agenda.

E. PRESENTATIONS

Councilmember Rasmussen entered the Council Chamber at 2:02 p.m.

Councilmember Clark presented a Proclamation declaring the month of June 2013 as Lesbian, Gay, Bisexual, and Transgender Pride Month. By unanimous consent, the Council Rules were suspended to allow Councilmember Clark to present the Proclamation and to allow Eric Bennett, President of Seattle Pride, to address the Council.

Councilmember Clark presented a Proclamation recognizing Equal Rights Washington for the Council to sign in session.

F. APPROVAL OF THE JOURNAL

The Journal of the Proceedings of the Seattle City Council meeting of April 21, 2014, was presented to the Chair for approval. By unanimous consent, the Journal was approved and signed.

G. PUBLIC COMMENT

Dave Schmitz addressed the Council regarding Agenda item 1, Council Bill No. 118098.

David Rolf addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Rosa Maria Ramirez addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Jesse Inman addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Hannah Martinson addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Ramy Khalil addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Scott James addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Rebecca Smith addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Larkin Potts addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Ubah Aden addressed the Council regarding Agenda item 1, Council Bill No. 118098.

Ivy Williams addressed the Council regarding Agenda item 1, Council Bill No. 118098.

H. PAYMENT OF BILLS, CLAIMS, AND SALARIES

Council Bill No. 118109, Appropriating money to pay certain audited claims and ordering the payment thereof.

Motion was made and duly seconded to pass Council Bill No. 118109.

The Motion carried and the Bill passed by the following roll call vote: In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen, Sawant - 9 Against: None. The President signed the Bill.

I. COMMITTEE REPORTS AND FINAL VOTE ON LEGISLATION

SELECT COMMITTEE ON MINIMUM WAGE AND INCOME INEQUALITY:

Agenda Item No. 1. - Council Bill No. 118098, Relating to employment in Seattle; adding a new Chapter 14.19 to the Seattle Municipal Code; establishing minimum wage and minimum compensation rates for employees performing work in Seattle; and prescribing remedies and enforcement procedures.

The Committee recommended that the Bill pass as amended.

ACTION 1:

Motion was made by Councilmember Licata and duly seconded, to amend Section 3 of Council Bill No. 118098, by deleting sections C and D of Seattle Municipal Code (SMC) 14.19.020.

~~C. The Director shall have the authority to issue a special certificate authorizing an employer to pay a wage less than the City of Seattle minimum wage, as defined in this Chapter, but above the Washington State minimum wage, as defined in RCW 49.46.020. Such special certificates shall only be available for the categories of workers defined in RCW 49.46.060 and shall be subject to such limitations as to time, number, proportion, and length of service as the Director shall prescribe. Prior to issuance, an applicant for a special certificate must secure a letter of~~

~~recommendation from the Washington State Department of Labor and Industries stating that the applicant has a demonstrated necessity pursuant to WAC 296-128.~~

~~D. The Director shall by rule establish the minimum wage for employees under the age of eighteen years, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations.~~

The Motion failed by the following roll call vote:

In favor: Bagshaw, Licata, O'Brien, Sawant - 4

Against: Burgess, Clark, Godden, Harrell, Rasmussen - 5

ACTION 2:

Motion was made by Councilmember Sawant and duly seconded, to amend Council Bill No. 118098, by substituting "April" with "January" in SMC Sections 14.19.030.A, 14.19.040.A, and 14.19.050.A, as shown in the strike through and underscored language below:

SMC 14.19.030 Hourly Minimum Wage -- Schedule 1 Employers

A. Effective ~~April~~ January 1 , 2015, Schedule 1 employers shall pay each employee an hourly minimum wage of at least $11.00.

SMC 14.19.040 Hourly Minimum Wage -- Schedule 2 Employers

A. Effective January ~~April~~ 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum wage of at least $10.00.

SMC 14.19.050 Hourly Minimum Compensation -- Schedule 2 Employers

A. Effective January ~~April~~ 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum compensation of at least $11.00.

The Motion failed by the following roll call vote:

In favor: Harrell, Licata, O'Brien, Sawant - 4

Against: Bagshaw, Burgess, Clark, Godden, Rasmussen - 5

ACTION 3:

Motion was made by Councilmember Sawant and duly seconded, to amend Council Bill No. 118098 by substituting SMC 14.19.030, Section A, and by deleting the last sentence in Section B of SMC 14.19.030, as shown below:

SMC 14.19.030, Section A:

"A. Effective January 1, 2015, Schedule 1 employers shall pay each employee an hourly minimum wage of at least 15.00. Effective January 1, 2016, the hourly minimum wage paid by a Schedule 1 employer to any employee shall be increased annually on a percentage basis to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter;"

SMC 14.90.030, Section B:

"B. Schedule 1 employers can meet the applicable hourly minimum wage requirement through a payment of the minimum wage, provided that the Schedule 1 employer is in compliance with all applicable law. Where an employee is paid on a commission or piece-rate basis, wholly or partially, the amount earned on such basis in each work-week period may be credited as a part of the total wage for that period, and the total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate. Where an employee is paid a bonus, the amount of the bonus in each work-week period may be credited as a part of the total wage for that period, and the total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate. ~~Pursuant to the following schedule, effective January 1, 2016, Schedule 1 employers that pay toward an individual employee's medical benefits plan shall pay the employee an hourly minimum wage as follows:~~

~~*Year*~~	~~*Hourly Minimum Wage*~~

~~2016~~	~~$12.50~~
~~2017~~	~~$13.50~~
~~2018~~	~~$15.00~~

~~Effective January 1, 2019, payment by the employer of health benefits for employees shall no longer affect the hourly minimum wage paid by a Schedule 1 employer.~~"

The Motion failed by the following roll call vote:

In favor: Sawant - 1

Against: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen -- 8

ACTION 4:

Motion was made by Councilmember Sawant and duly seconded, to amend Council Bill No. 118098, Section 2, SMC 14.19.010.P, definition of "Minimum compensation", by deleting "in addition to tips" before the language "actually received."

The Motion failed by the following roll call vote:

In favor: Sawant Against: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen - 8

ACTION 5:

Motion was made and duly seconded to pass Council Bill No. 118098.

The Motion carried and the Bill passed by the following roll call vote:

In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen, Sawant - 9

Against: None.

The President signed the Bill.

Agenda Item No. 2. - Resolution No. 31524, Requesting that the Department of Finance and Administrative Services work with the City Council and other appropriate City departments and stakeholders to strengthen implementation of any local minimum wage ordinance.

The Committee recommended that the Resolution be adopted as amended.

ACTION 1:

Motion was made by Councilmember Sawant, duly seconded and carried, to amend Resolution No. 31524, by substituting version 6 for version 5.

ACTION 2:

Motion was made and duly seconded to adopt Resolution No. 31524 as amended.

The Motion carried and the Resolution as amended was adopted by the following voice vote:

In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen, Sawant - 9

Against: None.

The President signed the Resolution.

Council President Burgess requested that the Council be at ease at 3:40 p.m. to allow members of the public to exit the Council Chamber.

The Council came back to order at 3:42 p.m.

FINANCE AND CULTURE COMMITTEE:

Agenda Item No. 3. - Council Bill No. 118094, Relating to the 2014 Budget; amending Ordinance 124349, which adopted the 2014 Budget, including the 2014-2019 Capital Improvement Program (CIP); changing appropriations to

various departments and budget control levels, and from various funds in the Budget; adding new projects; revising project allocations for certain projects in the 2014-2019 CIP; creating positions; modifying positions; lifting a proviso; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

The Committee recommended that the Bill pass as amended.

The Bill passed by the following roll call vote:

In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen, Sawant - 9

Against: None.

The President signed the Bill.

Agenda Item No. 4. - Resolution No. 31522, Of intention to modify the assessment rates and modify the boundaries for the West Seattle Junction Parking and Business Improvement Area.

The Committee recommended that the Resolution be adopted.

The Resolution was adopted by the following voice vote:

In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen, Sawant - 9

Against: None.

The President signed the Resolution.

PARKS, SEATTLE CENTER, LIBRARIES, AND GENDER PAY EQUITY COMMITTEE:

Agenda Item No. 5. - Council Bill No. 118066, Relating to the Department of Parks and Recreation and Seattle Public Utilities; transferring partial jurisdiction of a portion of Seward Park, located beneath and adjacent to the tennis courts and adjacent parking lot, from the Department of Parks and Recreation to Seattle Public Utilities for maintenance, repair and operation of a combined sewer underground storage tank, associated underground pipes and electrical lines, and limited surface ancillary facilities; and superseding certain requirements of Ordinance 118477, which adopted Initiative 42.

The Committee recommended passage of the Bill.

The Bill passed by the following roll call vote:

In favor: Bagshaw, Burgess, Clark, Godden, Licata, O'Brien, Rasmussen, Sawant - 8

Against: Harrell -- 1.

The President signed the Bill.

Councilmember Sawant exited the Council Chamber at 3:59 p.m.

Agenda Item No. 6. - Clerk File No. 313666, Council Concept Approval to allow the replacement and expansion of a utility service use (Seattle Public Utilities storm water facility) located at 5895 Lake Washington Boulevard S (Project No. 3015640, Type V).

The Committee recommended that the Petition be granted as conditioned.

The Petition was granted as conditioned by the following voice vote:

In favor: Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, Rasmussen - 7

Against: Harrell -- 1

Absent: Sawant -- 1.

The President signed the Findings, Conclusions, and Decision of the Council.

J. ADOPTION OF OTHER RESOLUTIONS

There were none.

K. OTHER BUSINESS

There was none.

L. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 4:01 p.m.

_____

Emilia M. Sanchez, Deputy City Clerk

Signed by me in Open Session, upon approval of the Council, on June 30, 2014.

_____

Tim Burgess, President of the City Council

_____

Monica Martinez Simmons, City Clerk

Exhibit 14

IFA to File Lawsuit Against Unfair and Discriminatory Seattle Minimum Wage Plan

Contact:
Matthew Haller, IFA, 202-460-8356
Jenna Weisbord,IFA. 202-662-0766
Ashley Bach, Pacific Public Affairs, 206-579-2414
mhaller@franchise.org
jweisbord@franchise.org

WASHINGTON, June 2-The International Franchise Association President & CEO Steve Caldeira, CFE, released the statement below following the passage of Seattle Mayor Ed Murray and the Seattle City Council's plan to raise the minimum wage to $15 an hour.

"The Seattle City Council and Mayor Murray's plan would force the 600 franchisees in Seattle, which own 1,700 franchise locations employing 19,000 workers, to adopt the full $15 minimum wage in 3 years, while most other small business owners would have seven years to adopt the $15 wage. These hundreds of franchise small business owners are being punished simply because they chose to operate as franchisees. Decades of legal precedent have held that franchise businesses are independently-owned businesses and are not operated by the brand's corporate headquarters.

"The City Council's action today is unfair, discriminatory and a deliberate attempt to achieve a political agenda at the expense of small franchise business owners. By picking winners and losers among Seattle businesses, this policy flies in the face of all legal precedent and defies common sense.

"IFA has no choice but to file a legal challenge against the city of Seattle for this action. The suit will seek to overturn the unfair and discriminatory minimum wage plan that was approved by the City Council. IFA will fight to preserve the tenets of the franchise model, which has helped hundreds of thousands of people enjoy business ownership and created economic opportunity for many."

###

About the International Franchise Association
The International Franchise Association is the world's oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education and advocacy, IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising.

Through its media awareness campaign highlighting the theme, Franchising: Building Local Businesses, One Opportunity at a Time, IFA promotes the economic impact of the more than 825,000 franchise establishments, which support nearly 18 million jobs and $2.1 trillion of economic output for the U.S. economy. IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law and business development.

Exhibit 15

CM Kshama Sawant
@cmkshama

Franchise owners: enough with the blame game! Organize, go to CorpHQ & renegotiate your rents. You can #RaiseTheWage! goo.gl/GXxWfH

Reuters Top News

I'm making $21 an hour at McDonald's. Why aren't you?
Under our unionâ��s agreement with McDonaldâ��s, I receive paid sick leave.

View on web

RETWEETS	FAVORITES
20	13

2:37 PM - 3 Jun 2014

Exhibit 16

MAYOR MURRAY STATEMENT ON INTERNATIONAL FRANCHISE ASSOCIATION LAWSUIT

June 11, 2014 by Office of Mayor Murray

Mayor Murray made the following statement today about a lawsuit filed by the International Franchise Association:

> *"The movement around wage equality in our nation began with fast food workers walking off the job. I believe we have to recognize that's where this started. That was the straw that broke wage disparity's back in this nation.*
>
> *Franchises have resources that a small business in the Rainier Valley or a small sandwich shop on Capitol Hill do not have. Franchise restaurants have menus that are developed by a corporate national entity, a food supply and products that are provided by a corporate national entity, training provided by a corporate national entity, and advertising provided by a corporate national entity. They are not the same as a local sandwich shop that opens up or a new local restaurant that opens up in the city. Our process for reaching $15 an hour in Seattle recognizes that difference.*
>
> *There is a problem in the franchise business model and I believe this is a discussion franchise owners should be having with their corporate parents. I don't believe that the economic strain comes from a fairly slow phase in of a higher minimum wage, but on a business model that really does — in many cases — harm franchise owners. I don't doubt at all that franchise workers are operating under tight conditions, but I think it's a conversation to have with the people who have decided to spend oodles of money on lawyers to fight a higher minimum wage."*

Filed Under: $15 Minimum Wage, An Affordable City, Economy, Murray

WELCOME!

Our blog will provide you the latest news from the Office of Seattle Mayor Ed Murray. If you have ideas or suggestions for what kind of content you'd like to see here, please let us know by emailing Laura Gentry, Digital Content Manager.

TRANSLATE THIS PAGE

MAYOR MURRAY ON TWITTER

Exhibit 17

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC., *et al.*, *Plaintiffs*, v. CITY OF SEATTLE, *et al.*, *Defendants*.	No. C14-848RAJ **TRANSCRIPT**

The following is a transcript of MSNBC's June 16, 2014 broadcast of "The Reid Report," hosted by Joy Reid. A video of the broadcast is available at http://www.msnbc.com/the-reid-report/watch/will-15-become-the-new-minimum-wage-282384963899.

TRANSCRIPT

JOY REID: $7.25 an hour. That's the federal minimum wage that millions of American workers live on. President Obama and Democrats in Congress have pushed to change that with the argument being that giving minimum wage earners more income would give 28 million workers in all, in all types of households, increased spending power. It's an argument the U.S.

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Washington, DC 20036
(202) 234-0090

Department of Labor has tried to make directly to businesses in videos like this one detailing the sacrifices that low-income workers often are forced to make.

RETAIL WORKER: Half my money goes to rent and I'm diabetic so the next big chunk of my money goes to medicine. And then there's food and transportation. And then I have nothing left. That's it.

RESTAURANT SERVER: It's incredibly hard. I live with my parents right now because otherwise my son and I would be homeless.

REID: Now, despite those efforts, the push to raise the minimum wage at the federal level is stalled. But from California to Washington State, that is not the case. So far 22 states have increased their minimum wage above the federal level. And the City of Seattle is taking the push to raise the wage even further. Earlier this month Seattle passed a law to increase the hourly minimum wage to $15 an hour and to phase it in over several years. Once it's fully phased in, Seattle will have the highest minimum wage in the nation. But, echoing many fiscal conservatives who oppose raising the federal minimum wage, a group of Seattle franchise owners has filed a lawsuit to stop Seattle's wage increase from going into effect. And their argument is a novel one. They claim that raising the minimum wage violates their constitutional rights. Joining me now to discuss this is Mayor Ed Murray of Seattle, who successfully led the effort to make $15 an hour the highest minimum wage in the country, in his city. Mayor, Mr. Mayor, thank you for being here. And I want to start by asking you how you actually managed to get this through. This was actually a unanimous city council vote. What argument did you make in pushing for this wage increase?

MAYOR ED MURRAY: Well, you know, income inequality is a major issue in this nation; it's destroying the middle class. And we felt that we needed to act if we wanted to start rebuilding the middle class. But we wanted to do $15 but we wanted to do it smart, so we brought business people together with labor and with nonprofits, and we spent four months negotiating the proposal as you see it. It gets to $15, it gets there in seven years, it counts certain types of compensation over a period of years towards wages and I think it was that compromise the council was willing to vote unanimously to pass it.

REID: So now talk a bit about of the opposition to what you're trying to do. You have had these business groups get together and they've made sort of a constitutional argument that has to do in part with if the businesses have to pay this minimum wage, they won't be able to spend on other things such as advertising their business, growing their business, and other things. What is sort of the argument against the wage and how are you guys fighting back against that in court?

MURRAY: So, you know—so business is not unanimous. There are businesses who are supportive, there are businesses who are neutral, there are businesses who are not happy, and those who actively oppose it. Those who are most actively opposing it are franchise businesses. They say that they're just like the individual sandwich or restaurant. But they're not. The individual sandwich shop or restaurant doesn't have a corporation design their menu, supply their food, provide their training, and do their advertising. So we didn't believe that they should be treated the same as a franchise. Actually, this whole minimum wage effort started because folks walked out of fast-food restaurants, workers walked out of fast-food restaurants, so it's

unfortunately they're focused on going to court. I think those franchise owners should focus on the corporations and their business model, because I think their business model needs to get a change, not our minimum wage proposal.

REID: So let's talk about some of the other arguments. There are three sort of main arguments that go to the question of whether businesses in Seattle can compete with businesses from out of state. Let's walk through them really quickly. The folks who are fighting your minimum wage increase say that by increasing the costs to franchisees associated with out-of-state companies, the law discourages those companies from doing business in Seattle. They say that violates the Commerce Clause of the Constitution, which reserves to Congress the right of regulating interstate commerce. Their second argument is that by treating independently-owned franchises differently from local companies, even though they are the same size, the law violates the franchisee's right to equal treatment under the law. And then their third argument is that by imposing these higher costs, it makes it difficult for out-of-state companies who own a franchise to maintain the quality of their trademarks. So these sort of novel legal arguments that get to various parts of the Constitution, and how are you fighting those?

MURRAY: They are novel legal arguments but I don't think they'll hold up in the end. Against, it's unfortunate, a lot of franchise owners in this city—there are not many franchises in this city—but those that exist, they struggle, we understand that. We believe the problem is with the corporate model and we believe that we can win the legal arguments. But the main thing to focus on is we've gone through 34 years of one economic theory, and it has failed. The middle class has eroded. So what we're saying is let's grow the middle class from the middle out. And

we're actually helping the smallest businesses by phasing them in over a much longer period of time. But you can't tell me that an individual restaurant owner in a small restaurant in the Capitol Hill neighborhood of Seattle is the same as McDonald's. They're simply not, and I think that the courts will recognize that.