RESOLUTION NO. 39237

BY REQUEST OF MAYOR STRICKLAND

A RESOLUTION providing for the submission of an initiative to the electors of the City of Tacoma as an alternative to City of Tacoma Citizens Initiative No. 1, at the General Election to be held on November 3, 2015, relating to minimum wage in the City of Tacoma; and directing the City Clerk to transmit to the Pierce County Auditor a certified copy of this resolution.

WHEREAS an initiative petition ("Citizens Initiative No. 1") for the enactment of an ordinance intending to establish a minimum wage in the City of Tacoma has been signed by registered voters equal in number to at least 10 percent of the total votes cast in the last preceding mayoral election and has been transmitted to the City Council pursuant to the provisions of the City Charter, and

WHEREAS, under the City Charter, the City Council may enact, reject, or take no action on an ordinance proposed by the initiative process within 30 days, and

WHEREAS the City Council has chosen not to take final action on Citizens’ Initiative No. 1, and to submit the proposal to the people at the November 3, 2015, General Election, and

WHEREAS a Minimum Wage Task Force ("Task Force") was established on May 5, 2015, through Resolution No. 39187, and Resolution No. 39194 increased the Task Force membership to 15 members and two alternates, to consist of nine City Council nominees intended to be geographically and culturally diverse to represent the entire Tacoma community, six members representing business and citizen groups, and two alternates, and
WHEREAS the Task Force met eight times between May 28, 2015, and
June 29, 2015, and, at the July 7, 2015, City Council meeting, the City Council
adopted Resolution No. 39231, accepting the Task Force's final report, which
contained two proposals (A and B), and

WHEREAS the Task Force members agreed that raising the minimum hourly
wage in Tacoma from $9.47 to $15 on January 1, 2016, would be unprecedented
and very difficult for small businesses and small non-profit organizations to
implement, and that raising the minimum wage should be done incrementally, in
phases or steps over time, and

WHEREAS, while the Task Force agreed on a number of elements of an
alternative proposal to the initiative that will appear on the November 2015 ballot, it
did not reach unanimous agreement on a single alternative, and ultimately offered
the Mayor and City Council two options for phasing in increases to the minimum
wage, and

WHEREAS Proposal A was endorsed by nine Task Force members, and
would achieve a minimum hourly wage of $15 for everyone working in Tacoma by
2024, and, for businesses with 150 or more employees, the minimum hourly wage
for employees would be $15 by 2020, and

WHEREAS Proposal B was endorsed by six Task Force members, and
would achieve a minimum hourly wage of $12 for everyone working in Tacoma by
2019, and
WHEREAS the City Council discussed options at the July 7, 2015, Special Study Session, and Mayor Strickland agreed to bring forward an alternative for City Council consideration at the July 14, 2015, Council meeting, and

WHEREAS the City Council has decided to propose an alternative to Citizens Initiative No. 1 with a ballot title as required under RCW 29A.72.050, and

WHEREAS, if approved by the voters, the alternative proposal to Citizens Initiative No. 1B would establish minimum wage rates for employees aged 16 and over performing work in the City of Tacoma of not less than $10.35 per hour beginning February 1, 2016; $11.15 per hour beginning January 1, 2017; and $12.00 per hour beginning January 1, 2018, adjusted annually thereafter based on the Consumer Price Index (CPI) as calculated and used by the state of Washington at that time, and requiring that an impact assessment be conducted in 2018 and every two years thereafter; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the Pierce County Auditor, as ex officio supervisor of elections in Pierce County, Washington, is hereby requested to submit to the qualified electors of the City of Tacoma, for their approval or rejection at the General Election to be held on November 3, 2015, an alternative to Citizens’ Initiative No. 1 as set forth in the attached Exhibit “A,” establishing minimum wage rates for employees aged 16 and over performing work in the City of Tacoma of not less than $10.35 per hour beginning February 1, 2016; $11.15 beginning January 1, 2017; and $12.00 beginning January 1, 2018, adjusted annually thereafter based on the Consumer Price Index (CPI) as calculated and used by the
state of Washington at that time, and requiring that an impact assessment be
conducted in 2018 and every two years thereafter.

Section 2. The City shall submit an alternative to Citizens' Initiative No. 1 to
the electorate of the City of Tacoma in the form substantially as follows:

CITY OF TACOMA INITIATIVE MEASURE NO. 1B

Concerns Establishing a Minimum Wage In The City Of Tacoma

As an alternative, the City Council has proposed
Initiative Measure No. 1B

The Tacoma City Council adopted Resolution No. 39237 concerning
establishing a minimum wage. If passed by the voters, Initiative 1B
would require employers to pay a minimum hourly wage to
employees aged sixteen (16) and over performing work in Tacoma of
not less than $10.35 per hour beginning February 2016, $11.15
beginning January 2017, and $12.00 beginning January 2018,
adjusted annually thereafter based on the Consumer Price Index
(CPI) as calculated and used by the State of Washington at that time,
and requiring that an impact assessment be conducted in 2018 and
every two years thereafter.

Should either of these measures be enacted into law?
Yes. ............... Γ
No ................. Γ

Regardless of whether you voted yes or no above, if one of these
measures is enacted, which one should it be?
Measure No. 1 . . . Γ

Or
Measure No. 1B. . Γ

Section 3. That, prior to August 4, 2015, the City Clerk shall send to the
Pierce County Auditor, as ex officio supervisor of elections, a certified copy of this
resolution, together with an initiative substantially in the form set forth above, for the
November 3, 2015, General Election.

Adopted JUL 14 2015

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney
EXHIBIT “A”

AN ORDINANCE relating to employment in Tacoma; amending the Tacoma Municipal Code by adding thereto a new Chapter 18.20, entitled “Minimum Wage,” to establish the minimum hourly wage rates for employees performing work in Tacoma; and prescribing remedies and enforcement procedures.

WHEREAS, it would be in the best interest of the public health, safety and welfare to enact the ordinance as set forth below; Now, Therefore,

BE IT ORDAINED BY THE VOTERS OF THE CITY OF TACOMA:

Section 1. Adding New Chapter 18.20 TMC (Minimum Wage). That the Tacoma Municipal Code is hereby amended by the addition thereto of new Chapter 18.20 to Title 18 of the Tacoma Municipal Code, entitled “Minimum Wage,” establishing the minimum hourly wage rates for employees performing work in Tacoma, and prescribing remedies and enforcement procedures, as set forth in the attached Exhibit “A.”

Section 2. Effective Date. That this ordinance shall take effect on February 1, 2016.
Sections:
18.20.010 Findings.
18.20.020 Authority.
18.20.030 Relationship to other requirements.
18.20.040 Definitions.
18.20.050 Application.
18.20.060 Minimum wage required.
18.20.070 Waivers; exemptions.
18.20.080 Review.
18.20.090 Exercise of rights protected; retaliation prohibited.
18.20.100 Notice and posting.
18.20.110 Employer responsibilities.
18.20.120 Enforcement.
18.20.130 Severability.

18.20.010 Findings.
A. Many persons employed in the City are paid wages which are insufficient to sustain minimum standards of living in the City.
B. Minimum standards of living in the City are higher than the minimum standards of living in many other areas of the state.
C. Minimum wage standards promote the general welfare, health, and prosperity of residents and businesses in Tacoma by ensuring that workers can better support and care for their families.
D. Minimum wage standards promote greater income equality.
E. Minimum wage standards in the City are necessary to:
1. promote the health and welfare of City residents;
2. safeguard employers and employees against unfair competition;
3. increase the stability of industry in the City;
4. increase the buying power of employees in the City; and
5. decrease the need for the City to spend public money for the relief of employees who also live in the City.

18.20.020 Authority.
This chapter is adopted pursuant to the powers vested in the City of Tacoma under the laws and Constitution of the State of Washington, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 11, of the Washington Constitution.
18.20.030 Relationship to other requirements.

This chapter provides for payment of a local minimum hourly wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections; 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. This chapter not 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.

18.20.040 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular. If specific provisions of law, code, regulation, or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered and/or amended provision.

“Adverse action” means to discharge, suspend, discipline, transfer, demote, or deny promotion, or threaten to do any of the prior listed actions, by an employer of an employee for any reason prohibited by Section 18.20.090 of this chapter.

“Charging party” means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person’s behalf, or the Director, when the Director files a charge.

“City” means the City of Tacoma.

“Director” means the Finance Director, or designee.

“Employ” shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act.

“Employee” shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act.

“Employer” shall have the same meaning as that term is given pursuant to the “Washington Minimum Wage Act”.

“Minimum Wage” or “Minimum Wage Rate” shall mean the minimum hourly rates of monetary compensation for work as specified in this chapter.

“Nonprofit Corporation” means any organization recognized as a nonprofit corporation under the provisions of Chapter 24.03 of the Revised Code of Washington (“RCW”), and exempt from the Washington State business and occupation tax pursuant to RCW 82.04.3651.

“Party” includes the person charging or upon whose behalf a charge is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter, and the Director.

“Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint-stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof.

“Tip” 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.
“Wage” shall have the same meaning as that term is given pursuant to the “Washington Minimum Wage Act.” Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of this Chapter.


18.20.050 Application.

Employees are covered by this chapter for each hour worked within the geographic boundaries of Tacoma, provided that an employee who performs work in Tacoma on an occasional basis is covered by this chapter only if the employee performs more than 80 hours of work in Tacoma within a calendar year. Time spent in Tacoma solely for the purpose of traveling through Tacoma from a point of origin outside Tacoma to a destination outside Tacoma, with no employment-related or commercial stops in Tacoma 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.

18.20.060 Minimum wage required.

A. Beginning February 1, 2016, and until January 1, 2017, every employer shall pay to each employee who has reached the age of 16 years wages at a rate of not less than $10.35 per hour.

B. Beginning January 1, 2017, and until January 1, 2018, every employer shall pay to each employee who has reached the age of 16 years wages at a rate of not less than $11.15 per hour.

C. Beginning January 1, 2018, and until January 1, 2019, every employer shall pay to each employee who has reached the age of 16 years wages at a rate of not less than $12.00 per hour.

D. Beginning January 1, 2019, and each following January 1st as set forth under subsection E, every employer shall pay to each employee who has reached the age of 16 years wages at a rate of not less than the applicable amount established under subsection E.

E. On September 30, 2018, and on each following September 30th, the Director shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year’s minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the 12 months prior to each September 1st as calculated by the United States Department of Labor and as used by the state of Washington at that time. Each adjusted minimum wage rate calculated under this Subsection E takes effect on the following January 1st.

18.20.070 Waivers; exemptions.

Employers issued special certificates pursuant to RCW 49.46.060 are exempt from the requirements of Section 18.20.060 of this chapter to pay minimum wage to those employees who are subject to the certificate(s); provided that, the employer is in compliance with the terms and conditions of the certificate(s) issued.

18.20.080 Review.

The City Manager is directed to prepare and present a proposal in year 2018, and every two years thereafter, to the City Council for a study to assess the impacts of the increase in the minimum wage upon, (a) small businesses, (b) minimum/low wage workers, and (c) the City’s economy in the context of Pierce County and the greater Puget Sound region. The assessment is intended to be used by the City and business, labor, and community partners to determine strategies and goals to
address the findings of the assessment, and for the City Council to consider adoption of identified
goals as policies to strengthen small, local businesses and others, to develop policies that are part of
the City's comprehensive campaign to reduce poverty.

18.20.090 Exercise of rights protected; retaliation prohibited.
A. 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.
B. It shall be a violation for an employer to take adverse action against an employee because the
employee has exercised in good faith the rights protected under this chapter.
C. The protections afforded under this subsection shall apply to any person who mistakenly, but in
good faith, alleges violations of this chapter.

18.20.100 Notice and posting.
A. Employers shall give notice that employees are entitled to payment of minimum wage; the
current minimum wage rate and their rights under this chapter; that adverse action against
employees who exercise any right under this chapter is prohibited; and that each employee has the
right to file a charge if payment of minimum wage, as required by this chapter, is denied by the
employer or the employer takes an adverse action against an employee for exercising rights granted
under this chapter.
B. The Director shall create and make available to employers a model notice, hereinafter referred to
as the “Notice,” which contains the information required under paragraph A of this subsection for
their use in complying with this subsection. The Notice shall be printed in English and Spanish and
any other languages that the Director determines are needed to notify employees of their rights
under this chapter.
C. Employers may comply with this section by posting the Notice in a conspicuous and accessible
place in each establishment where employees are employed.
D. Employers may also comply with this section by including the Notice in employee handbooks or
other written guidance to employees concerning employee benefits or leave rights, or by
distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may
be accomplished electronically.

18.20.110 Employer responsibilities.
A. Employers shall certify compliance with this chapter upon application for and renewal of their
City of Tacoma business license.
B. Employers shall retain records documenting hours worked by employees in the City of Tacoma,
and the wages paid to such employees. Employers shall retain such records for a period of three
years, and shall allow the Director access to such records, with at least five business days’ notice
and at a mutually agreeable time, to investigate potential violations and to audit compliance with
the requirements of this chapter. Employers shall make copies of these records available to
employees upon request and within a reasonable period of time.
C. Records and documents relating to medical certifications, recertifications, or medical histories
of employees or employees’ family members created for purposes of this chapter are required to be
maintained as confidential medical records in separate files and/or records from the usual personnel
files. If the Americans with Disabilities Act (“ADA”) applies, then these records must comply with
ADA confidentiality requirements.
18.20.120 Enforcement.

A. Powers and duties of Director.

1. The Director is authorized to enforce this chapter, and may promulgate rules and regulations consistent with this chapter, provided that the Director shall hold one or more public hearings prior to adoption of final rules and regulations.

2. The Director shall attempt to conciliate and settle by agreement, any alleged violation or failures to comply with the provisions of this chapter.

B. Charge filing.

1. A charge alleging a violation of this chapter shall be in writing, on a form or in a format determined by the Director and signed by or on behalf of a charging party, and shall describe the violation complained of and shall include a statement of the dates, places, and circumstances and the persons responsible for the alleged violation.

2. A charge alleging a violation of this chapter may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

C. Citations and Notices of Assessment, Determinations of Compliance, and Civil Penalties.

1. The Director shall issue either (a) a citation and notice of assessment or (b) a determination of compliance no later than 60 calendar days after receipt of the charge, unless the Director extends the response date. Notice of the extended date will be provided by the Director to the parties in writing.

2. The citation and notice of assessment or determination of compliance shall be delivered in writing to all parties by personal delivery or first-class mail.

3. If the Director determines that a violation has occurred and issues a citation and notice of assessment, the assessment shall include a determination of all unpaid wage amounts that are due, plus interest of 1 percent per month. The assessment may not include any amounts owed more than three years before the date the charge was filed.

4. If the Director finds any violation of this chapter, the Director may issue a civil penalty in the amount of $250, provided the Director may waive or reduce the civil penalty if the employer comes into compliance within ten calendar days of the notice or shows that its failure to comply was due to reasonable cause and not willful neglect. If the Director finds a willful violation of this chapter which results in a citation and notice of assessment, the Director may issue a civil penalty that shall not be less than $250 or an amount equal to two times the total value of unpaid leave the employer failed to credit or pay the employee, whichever is greater, provided the Director may waive or reduce the civil penalty if the employer has not previously been found by the Director to have willfully violated this chapter, and the employer provides payment to the employee of all amounts of unpaid wages and interest due, all as determined in the citation and notice of assessment, within ten business days of receipt of the citation and notice of assessment.

5. Payment by the employer, and acceptance by the employee of all unpaid wages and interest assessed by the department in a citation and notice of assessment shall constitute full and complete satisfaction by the employer of all payment requirements in the citation and notice of assessment.

6. Nothing in this chapter shall be construed as creating a private cause of action for employees to file suit against an employer.
D. Administrative Review by Director.

1. General.

A person to whom a Citation and Notice of Assessment ("Citation") or a Determination of Compliance ("Determination") or civil penalty ("Penalty") is assessed may request an administrative review of the Citation, Determination, or Penalty.

2. How to request administrative review.

A person may request an administrative review of the Citation, Determination, or Penalty by filing a written request with the Director within ten calendar days from the date of the Citation, Determination, or Penalty. The request shall state, in writing, the reasons the Director should review the Citation, Determination, or Penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Director shall review the information provided.

3. Decision of Director.

After considering all of the information provided, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Citation, Determination, or Penalty. The Director’s decision shall be delivered, in writing, to all parties by first-class mail.

E. Appeals to the Hearing Examiner of Director’s Decision.

Appeal of the Director’s decision shall be made within ten calendar days from the date of the Director’s decision by filing a written notice of appeal, clearly stating the grounds that the appeal is based upon, with the Hearing Examiner, which appeal shall be governed by TMC 1.23. The Hearing Examiner shall notify all parties, by mail, of the time and place of hearing.

18.20.110 Severability.

If any provision or section of this chapter shall be held to be void or unconstitutional, all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.
Citizens’ Initiative Measure No. 1 and Tacoma City Council Initiative Measure No. 1B concern establishing a minimum wage in the City of Tacoma.

**City of Tacoma Citizens’ Initiative Measure No. 1** would require employers of a certain size to pay employees who work in the City of Tacoma, or maintain, report to, or are supervised from, an office in the City, an hourly wage of not less than fifteen dollars ($15.00), adjusted annually by the rate of inflation. This measure would also create a citizen commission to monitor the City’s administration and enforcement of the minimum wage requirements, and make violation a crime.

As an alternative, the Tacoma City Council, through Resolution No. 39237, has proposed **City of Tacoma Initiative Measure No. 1B**.

**City of Tacoma Initiative Measure No. 1B** would require employers to pay a minimum hourly wage to employees aged sixteen (16) and over performing work in Tacoma of not less than $10.35 per hour beginning February 2016, $11.15 beginning January 2017, and $12.00 beginning January 2018, adjusted annually thereafter based on the Consumer Price Index (CPI) as calculated and used by the State of Washington at that time, and requiring that an impact assessment be conducted in 2018 and every two years thereafter.

1. Should either of these measures be enacted into law?
   - Yes. __________ √
   - No. __________  

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?
   - Initiative Measure No. 1 ... √
   - or
   - Initiative Measure No. 1B ... √