

**CITY OF OLYMPIA, WASHINGTON**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO A PROPOSED INCOME TAX INITIATIVE; ENTERING RECITALS AND FINDINGS; DECIDING AGAINST PASSING OR ENACTING A PROPOSED INITIATIVE ORDINANCE TO ESTABLISH AN INCOME TAX ON SOME CITY RESIDENTS; AND, EXERCISING ITS LEGISLATIVE DISCRETION AGAINST ORDERING A SPECIAL ELECTION THEREON.**

**THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1. RECITALS AND FINDINGS.**

**1.1** The City of Olympia is a noncharter code city organized under the Optional Municipal Code in Title 35A Revised Code of Washington.

**1.2** RCW 35A.11.100 and Olympia Municipal Code Chapter 1.16 provide authority for Olympia's registered voters to sign a petition for initiative to directly initiate and enact legislation through the initiative process upon obtaining signatures of fifteen percent (15%) of the total number of persons registered to vote within the City of Olympia on the day of the last preceding city general election.

**1.3** The powers of initiative and referendum in noncharter code cities such as the City of Olympia shall be exercised in the manner set forth for the commission form of government in RCW 35.17.240 through RCW 35.17.360.

**1.4** The local organization known as Opportunity for Olympia (or "OFO") has submitted an initiative petition to the Olympia City Council to adopt an ordinance or submit it unaltered to a city-wide vote pursuant to state law to establish a fund dedicated to funding one year of free community college for each year's public high school graduates and those students receiving GED high school equivalency certificates who live in the City of Olympia, or an equivalent amount of money for those public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington; and where ninety-five (95) percent of all funds raised must be spent on tuition, not administrative costs, and that such measure would be funded by establishing an income tax of 1.5% on household income exceeding \$200,000 in the City of Olympia (the "Income Tax Initiative").

**1.5** The OFO Initiative Petition was filed with the City Clerk for the City of Olympia on July 6, 2016.

**1.6** On July 7, 2016, the OFO Income Tax Initiative Petition was filed with the office of the Thurston County Auditor to determine pursuant to RCW 35A.01.040 and RCW 35A.11.100 whether the Income Tax Initiative Petition had obtained sufficient signatures of registered voters within the City of Olympia.

**1.7** On July 13, 2016, the Thurston County Auditor issued a Certificate of Sufficiency finding that the number of registered voters in the City of Olympia for the 2015 General Election was 31,346; that the initiative's proponents had submitted 8,947 signatures on the initiative petition; that the Auditor's office examined 8,470 signatures; that the minimum number of verified registered voters' signatures for a sufficient initiative petition is 4,702; that 4,719 signatures of registered voters were verified; and 3,751 signatures were rejected. Based upon this examination, the Thurston County Auditor determined that the initiative petition was signed by the requisite number of persons listed as registered voters within the City of Olympia. As a result of this examination, the Thurston County Auditor issued a Certificate of Sufficiency pursuant to RCW 35A.11.100.

**1.8** Under law, the City Council may:

**1.8.1** Pass the OFO's proposed ordinance without alteration within twenty days after issuance of the Auditor's Certificate of Sufficiency has been received by the City Clerk;

**1.8.2** Immediately following receipt of the Auditor's issuance of the Certificate of Sufficiency for the Petition, request that the Auditor place the Petition on the ballot on the next election date as provided in RCW 29A.04.330 (*see* RCW 35.17.260); or

**1.8.3** Take no action to pass the OFO's proposed ordinance or to order an election thereon, leaving to any City taxpayer the option to commence an action against the City to obtain a decree ordering an election to be held in the city upon the proposed ordinance attached to the initiative petition (*see* RCW 35.17.290).

**1.9** OFO's Income Tax Initiative proposes a local income tax which is contrary to state law, making the Income Tax Initiative invalid because it violates RCW 36.65.030, which provides that: "A county, city, or city-county shall not levy a tax on net income." And the Income Tax Initiative purports to tax "adjusted gross income," which is fundamentally a net income tax concept. Net income tax is not a term of art in the main body of the Internal Revenue Code. The term occurs in a few sections, and each time it is defined differently for the purposes of the specific section. Adjusted gross income, on the other hand, is expressly defined in the Internal Revenue Code as gross income minus certain enumerated deductions. A taxpayer's "taxable income" is then computed by applying certain additional deductions.

While the word "net" does not appear in the definition, there is language elsewhere in the Internal Revenue Code and Treasury Regulations that adjusted gross income is treated as a net concept. Further, similar to the Income Tax Initiative, adjusted gross income is used in the Internal Revenue Code as a benchmark for determining the appropriate income threshold for taxation in some cases. For example, the Patient Protection and Affordable Care Act imposes a "net investment income tax" on certain taxpayers that is pegged to adjusted gross income.

The City Council determines that a City tax on adjusted gross income is a type of net income tax because it is a tax on gross income netted by a number of deductions and adjustments.

**1.10** The Olympia City Council has examined the specific mechanisms and content of OFO's Income Tax Initiative and proposed ordinance and has concluded it presents administrative flaws and questionable legal assertions which have not been resolved. The Olympia City Council, recognizing the flaws in OFO's Income Tax Initiative and proposed ordinance, attempted in good faith to find workable solutions to solve the administrative and legal problems posed in the initiative petition and ordinance. The City Council was unable to fully and fairly investigate, study, reflect, deliberate and secure public engagement and dialogue into the complex issues and administrative flaws and legal issues presented by OFO's Income Tax Initiative and ordinance.

**1.11** Collaboration between the government of the City of Olympia, its elected officials, and the Olympia community regarding the local impacts of the current public education finance structure and the current state and local tax system depends upon reliable and relevant information. The City Council recognizes that any attempt to address the cost of higher education and public revenue options will require long-term, systemic change based upon adequate study, public engagement, dialogue and deliberation. The Olympia City Council further recognizes the far reaching and significant beneficial impact of improved access to post-secondary education and vocational training and supports efforts to reduce student loan debt and address a regressive state and local tax system which places a larger burden upon those least able to pay.

**1.12** Washington case law and RCW 35A.11.020, RCW 35A.11.030, and RCW 35A.11.090, specifically vests the City Council, as the City's local legislative body, with the power to enact ordinances governing taxation as well as appropriations and OFO's Income Tax Initiative would improperly interfere with the exercise of a power delegated by state law exclusively to a local legislative body.

**1.13** Under RCW 29A.04.330(1), city general elections are "held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years." The next City general election is November 2017. A special election may be held in conjunction with a State general election. RCW 29A.04.175. But, under RCW 29A.04.330(2), only a city's "governing body" can call a special election. The City Council is the City's "governing body" and it exercises its legislative discretion not to call for a special election on the Income Tax Initiative which it believes to be legally invalid and unconstitutional.

**1.14** The Olympia City Council recognizes its duties and responsibilities as a legislative and governing body under state law, and that the initiative power is limited by statute, as well as by decisions of the Washington Supreme Court and other appellate courts of this state.

**1.15** RCW 35.17.290 contemplates that any taxpayer and resident who feels aggrieved by the decision of the City Council to neither pass nor enact OFO's Income Tax Initiative or to order an election thereon, may commence an action in superior court against the City to procure a decree ordering an election be held in the city for the purpose of voting upon the proposed initiative ordinance, should the court find the petition to be sufficient and should the court also find that the initiative petition is within the initiative power granted to citizens for direct legislation.

**SECTION 2. INITIATIVE REJECTED.** The income tax ordinance proposed by Opportunity for Olympia's Income Tax Initiative Petition is hereby rejected.

**SECTION 3. NO ELECTION ORDERED.** As the elected legislative and governing body of the City of Olympia, this Council rejects ordering a special election upon OFO's Income Tax Initiative on the grounds that said initiative is beyond the lawful initiative power granted to citizens for direct legislation; that the initiative petition intrudes upon the exclusive statutory power granted to the legislative or governing bodies of code cities such as the City of Olympia; and that the proposed ordinance in Opportunity for Olympia's Initiative Petition is contrary to state law.

**SECTION 4. CONTINUATION OF COUNCIL'S PRIOR DIRECTION.** Consistent with the Council's unanimously-adopted motion on July 12, 2016, the City Manager is authorized to take all reasonable steps on behalf of the City of Olympia and this Council, to obtain a judicial determination whether the initiative is a lawful, valid exercise of the initiative power granted to Olympia's citizens under state law and, if not, to obtain an injunction prohibiting such initiative measure from appearing on a ballot. This authorization includes approval of any appeals as may be necessary before the appellate courts of this state.

**PASSED BY THE OLYMPIA CITY COUNCIL** this \_\_\_\_\_ day of July, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY