

RESOLUTION NO. _____

**REQUESTING WHATCOM COUNTY SUPERIOR COURT ISSUE A DECLARATORY
JUDGMENT TO DETERMINE WHETHER INITIATIVE 2024-01 IS PROCEDURALLY
INVALID**

WHEREAS, Whatcom County Council recognizes the importance of the initiative process granted in the County Charter; and

WHEREAS, the Whatcom County Charter Commission, and the Whatcom County Council and the voters of Whatcom County have moved to facilitate greater access to the citizens' initiative process in Whatcom County; and

WHEREAS, the initiative process can only be used lawfully and is subject to rules and limitations imposed by the County Charter and State Law; and

WHEREAS, Washington Courts have recognized that it is appropriate to evaluate a proposed local initiative to determine whether it is within the limited scope of the local initiative process; and

WHEREAS, Washington Courts have recognized that the scope of the citizen initiative process is far more limited at the local level versus the state level; and

WHEREAS, Washington Courts have deliberated over distinctions of legislative versus administrative matters that may or may not be the subject of citizen initiatives; and

WHEREAS, Whatcom County has an Advisory Memorandum from November 2013 that outlines legal tests and procedures to determine if a local ballot measure is a proper subject for initiative and referendum; and

WHEREAS, the Advisory Memorandum states that the only way for the validity of the subject matter of a proposed Initiative to be addressed is in the courts; and

WHEREAS, proposed Initiative 2024-01 has apparent defects that a court must adjudicate; and

WHEREAS, Initiative 2024-01 appears to be an invalid referendum because it seeks a referendum on a county ordinance but was not supported by sufficient signatures and/or concerns subjects exempt from referendum under the County Charter; and

WHEREAS, the petition for Initiative 2024-01 appears to be invalid for violating the petition form requirements of Whatcom County Code 1.08.060.D, which require that the ballot title be inserted in the "We, the undersigned" section of the petition itself, yet it is missing; and

51 **WHEREAS**, Initiative 2024-01 appears to interfere with the County Council's
52 exclusive authority to refer measures to the ballot under RCW 29A.04.321; and

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54 **WHEREAS**, Initiative 2024-01 appears to interfere with the County Council's
55 exclusive authority over County budgets as recognized by the Washington Supreme Court in
56 *Protect Public Health v. Freed*, 192 Wn.2d 477 (2018) (removing county initiative from the
57 ballot for interfering with County Council's exclusive budgetary authority), and interferes
58 with the County's ability to pass a budget in a timely manner; and

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60 **WHEREAS**, proposed Initiative 2024-01 appears to exceed the scope of the initiative
61 process because its single operative sentence seeks only to repeal Whatcom County
62 Ordinance 2022-045, which cannot be done by local initiative; and

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64 **WHEREAS**, Ordinance 2022-045 contained two primary components: (1)
65 temporary/preliminary provisions placing a levy lid lift on the 2022 ballot, and (2)
66 permanent provisions to take effect if the levy lid lift is enacted, directing levy proceeds
67 towards children's well-being and protecting taxpayers by requiring planning and
68 performance audits; and

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70 **WHEREAS**, the temporary/preliminary provisions of Ordinance 2022-045 have been
71 superseded by the vote of the people and cannot effectively be repealed; and

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73 **WHEREAS**, the repeal of the permanent provisions in Ordinance 2022-045 would
74 harm taxpayers by retroactively removing the voters' restriction on the use of levy proceeds
75 and accountability measures such as planning and performance audits; and

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77 **WHEREAS**, the repeal of restrictions on the use of levy funds *after the voters have*
78 *approved the levy* appears to interfere with the statutory scheme governing property taxes,
79 which authorize a levy lid lift measure to include restrictions on the use of tax proceeds and
80 allows voters to rely upon the permanence of those restrictions for the life of the levy; and

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82 **WHEREAS**, Section 5.40 of the Whatcom County Charter expressly gives the County
83 Council a role in evaluating a proposed initiative, and deciding whether to approve or reject
84 the initiative or to propose a substitute to place before the voters; and

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86 **WHEREAS**, the County Council's role under the Charter necessarily requires the
87 County Council to evaluate both the policy and legality of a proposed initiative; and

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89 **WHEREAS**, since the County Charter was enacted in 1978, Washington courts have
90 confirmed that courts and judges should make the decision on whether a proposed initiative
91 is legal; and

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93 **WHEREAS**, Initiative 2024-01 has apparent legal defects that must be evaluated for
94 the County Council to fulfil its duties under the County Charter, and the County Council
95 believes it is most appropriate for a Court to conduct that legal evaluation; and

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97 **WHEREAS**, ignoring these apparent legal problems would not make them go away,
98 since initiatives are subject to post-election challenge; and

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