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A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

21 To declare the existence of an emergency with respect to the need to repeal Initiative 77 –
22 Minimum Wage Amendment Act of 2018.

23
24 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this
25 resolution may be cited as the “Tipped Wage Workers Fairness Emergency Declaration
26 Resolution of 2018”.

27 Sec. 2. (a) DC Law 21-144, the “Fair Shot Minimum Wage Amendment Act of 2016,”
28 became effective on September 2, 2016. This law provides for incremental minimum wage
29 increases, raising the minimum wage to \$15.00 per hour as of July 1, 2020. Additionally, it
30 provides for an incremental increase of the hourly minimum wage required to be paid by
31 employers to employees who receive gratuities, also known as the “tipped minimum wage.”
32 Specifically, under DC Law 21-144, the hourly “tipped minimum wage” increased from \$2.77 to
33 \$3.33 on July 1, 2017 and to \$3.89 on July 1, 2018. It will also increase to \$4.45 on July 1, 2019
34 and to \$5.00 on July 1, 2020.

35 (b) Tipped employees are entitled to the “tipped minimum wage” regardless of
36 how much they earn in tips. If a tipped employee’s tips, when combined with the “tipped
37 minimum wage,” do not equal or exceed the minimum wage, his or her employer is required by
38 law to pay the difference, to ensure that that the tipped worker is earning the full minimum wage.

39 (c) On June 19, 2018, “Initiative 77 – Minimum Wage Amendment Act of 2018,”
40 was approved in a Primary Election. The Initiative purports to raise the minimum wage to
41 \$15.00 per hour in 2020 even though that is already law. The Initiative also steadily increases
42 the “tipped minimum wage” between July 1, 2018 and July 1, 2025 and eliminates the “tipped
43 minimum wage” entirely by July 1, 2026.

44 (d) DC Act 22-436 was transmitted to Congress on August 28, 2018 for the 30-
45 day passive approval and is projected to become District law on October 9, 2018. Under DC Act
46 22-436, the “tipped minimum wage” was supposed to increase to \$4.50 as of July 1, 2018.
47 When DC Act 22-436 becomes law on October 9, 2018, the “tipped minimum wage” will
48 automatically increase from \$3.89 to \$4.50.

49 (e) Because DC Act 22-436 mandates that the increase to \$4.50 was to occur on
50 July 1, 2018, employers of tipped workers may also be subject to claims that they owe their
51 tipped employees back pay, as a result of the increase, retroactive to July 1, 2018. DC Act 22-
52 436 does not specify a grace period or time for implementation for employers.

53 (f) Additionally, employers will be expected to pay the increased “tipped
54 minimum wage” immediately. This leaves employers with no time to account for this increase,
55 causing financial strain on employers. The vast majority of tipped workers are restaurant
56 workers, and over 95% of the sit-down restaurants in the District are independently owned and

57 operated. Many restaurants operate with thin margins. Yet, the financial impact of Initiative 77
58 will be immediate.

59 (g) Generally, substantial changes in law or policy such as raising the “tipped
60 minimum wage” or implementing new programs like universal paid leave are accompanied by an
61 implementation period to allow employers the time to absorb the changes. When the “tipped
62 minimum wage” was amended in 2016 by DC Law 21-144, employers had almost 10 months
63 between when the law became effective and the first increase in the “tipped minimum wage”
64 went into effect.

65 (h) Without emergency action by the Council, employers will not only have had
66 no time to ready for the implementation but will be immediately liable to possible claims for
67 retroactive changes. Thus, an immediate need exists to repeal DC Act 22-436.

68 Sec. 3. The Council of the District of Columbia determines that the circumstances
69 enumerated in Section 2 constitute emergency circumstances making it necessary that the
70 “Tipped Wage Workers Fairness Emergency Amendment Act of 2018” be adopted on an
71 emergency basis.

72 Sec. 4. This resolution shall take effect immediately.