RESOLUTION NO. 20160804-xxx

WHEREAS, the City of Austin Municipal Court has the authority to hear certain civil and criminal cases punishable only by fine; and

WHEREAS, some residents of Austin, living in poverty or close to poverty, are not reasonably able to pay Municipal Court fines; and

WHEREAS, the Austin Municipal Court has authority to confine an individual to jail for failing to pay a fine it has previously assessed; and

WHEREAS, the U.S. Supreme Court, in *Tate v. Short* (1971), ruled it was unconstitutional for a Texas municipal court to imprison a defendant, who had been found guilty of a fine-only offense, for nonpayment of his fine when he was financially unable to pay it; and

WHEREAS, jailing indigent defendants harms families and communities by increasing the defendants' likelihood of job loss and eviction; and

WHEREAS, applicable ordinances and criminal laws do not define "indigency," which may result in inconsistent application of the concept to legal matters before the Municipal Court, and increases the likelihood of erroneously incarcerating a person who is indigent but whom the Court failed to identify as indigent; and

WHEREAS, the U.S. Department of Health & Human Services issues "federal poverty guidelines" annually, defining indigency based on household income and household size, which numerous federal, state and local agencies use as a guidepost for indigency; and

WHEREAS, the Center for Public Policy Priorities has concluded families and individuals in Austin need to have an income of at least two times (200%) the federal poverty level to make ends meet; and

WHEREAS, Texas Rule of Civil Procedure 145(a) assumes a person is indigent if they are presently receiving "a governmental entitlement based on indigency," and programs such as the Women, Infants and Children (WIC) Program sets income eligibility at 185% of the federal poverty level, and the Children's Health Insurance Program (CHIP) sets income eligibility at 200% of the federal poverty level; and

WHEREAS, federal case law encourages local governments to find alternatives to fines for defendants who cannot afford to pay fines, and Texas law permits judges to assign community service in lieu of a fine to defendants a judge determines have insufficient resources or income to pay a fine or court costs, or have failed to previously pay an assessed fine or court costs; and

WHEREAS, Texas law permits a judge to assign a person up to 16 hours of community service a week before being required to make findings about whether the number of hours would impose an undue hardship on the person or the person's family; and

WHEREAS, 16 hours of community service a week, and even lesser amounts of time, may be an undue hardship for many Austin residents, including those working more than one job to make ends meet, those who are the primary caregiver for a child, and others with similar obligations to fulfill;

WHEREAS, Texas Code of Criminal Procedure article 45.203 authorizes the governing body of a municipality to adopt rules and regulations governing the procedures in its municipal court and for the collection of fines imposed by the

municipal court, so long as they are not inconsistent with state law; **NOW, THEREFORE,**

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

It is the policy of Council that the City make every effort to avoid committing to jail persons who cannot afford to pay fines, because the purpose of imposing fines is to improve the community by deterring violations of laws within the Municipal Court's jurisdiction to enforce, and community welfare is undermined when residents who are indigent are jailed for not paying a fine they cannot afford.

BE IT FURTHER RESOLVED:

It is the policy of Council that an evaluation of a defendant's indigency take into account a realistic assessment of the cost of living in Austin, and that a defendant only be committed to jail for nonpayment of a fine if it is indisputably clear that the failure to pay is willful disobedience and not because paying the fine would cause an undue hardship on the defendant or the defendant's dependents.

BE IT FURTHER RESOLVED:

It is the expectation of Council that judges who are appointed to the Municipal Court will act in conformity with the principles detailed in this resolution, with the canons of judicial conduct, and in a manner not inconsistent with the laws of the State.

BE IT FURTHER RESOLVED:

The City Manager is directed to draft a proposed amendment to Chapter 2-10, Article 3 of the City Code and present it to Council within 90 days, in order to:

1. Include a definition for indigency for use by the Municipal Court, which establishes the baseline as 200% of the federal poverty guidelines, but allows judges to exercise their discretion to determine that a defendant with a higher income is not financially able to pay a fine based on the judge's evaluation of the defendant's individual circumstances;

2. Make it clear a defendant may only be committed to jail for failing to pay a fine if the Court has first determined that the defendant is not indigent and entered written findings of the defendant's non-indigency into the case record;

BE IT FURTHER RESOLVED:

The City Manager and Presiding Judge are directed to study nationwide best practices regarding:

1. alternative definitions of indigence used in other courts that may better reflect individual defendants' inabilities to discharge their sentences;
2. the appointment of counsel in fine-only offenses in instances when a defendant might be committed to jail; and
3. expanding the list of community service options that may be made available to defendants.

The City Manager and Presiding Judge shall present their findings to Council within 90 days.

BE IT FURTHER RESOLVED:

The City Manager and Presiding Judge are directed to ensure there are forms available to Municipal Court judges to facilitate both the evaluation of a defendant's indigency or non-indigency and entry of the judge's findings about indigency into the Court record;

BE IT FURTHER RESOLVED:

The City Manager and Municipal Court Clerk are directed to develop a system to track the number of defendants committed to jail by the Municipal Court, including the reason for and duration of the commitment, and to make that information available to Council during judicial reappointments.

BE IT FURTHER RESOLVED:

The City Manager and Presiding Judge are directed to draft guidelines as a reference point for determining how many hours of community service would potentially impose an undue hardship on defendants, while working within the framework of guidelines established in State law. The guidelines should take into account factors such as the person's age, responsibility for

dependents, weekly work volume, and physical impairment. Those draft guidelines should be presented to Council within 90 days.

BE IT FURTHER RESOLVED:

The City Manager and Presiding Judge are directed to provide information to Council regarding any additional resources and administrative support needed to implement this resolution.

ADOPTED: _____, 2016 **ATTEST: _____**

Jannette S. Goodall
City Clerk