

# November 6, 2018 General Election Initiative Petition Log

## INITIATIVES INTENDED FOR NOVEMBER 6th, 2018 GENERAL ELECTION

- Deadline to submit signature sheets - 5:00 p.m. July 6, 2018
- Required signatures of active registered City of Portland voters to qualify to the ballot – 34,156

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### Petitions Qualified to the Ballot

[Initiative Petition PDX 03 "Fair Elections/Clean Governance Charter Amendment"](#)

[Initiative Petition PDX 04 "Portland Clean Energy Community Benefits Initiative 2018"](#)

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### Petition ID PDX 01 (Withdrawn by petitioners)

Prospective Petition Filed: 12/20/2017

#### Chief Petitioners (contact information):

Ronald A. Buel  
1810 NE 70<sup>th</sup> Ave.  
Portland OR 97213  
Ron@donavoncards.com

B. Elizabeth Trojan  
12320 SW 60<sup>th</sup>  
Portland, OR 97219  
elizat8@pobox.com

#### Petition Documents:

[Text of Proposed Charter Change \(via chief petitioners\)](#)

[Withdrawal of Petition From SEL 375](#)

#### Title of Prospective Initiative Petition

Fair Elections/Clean Governance Charter Amendment

#### Status:

12/20/17 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited constitutional review to be completed by 12/28/17.

12/28/17 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney on 12/29/17 to draft a ballot title.

12/29/17 - Ballot title request for prospective initiative petition PDX 01 sent to City Attorney per ORS 250.275. Ballot title due to City Auditor's Office by 1/8/17.

01/05/18 - Chief petitioners submit [SEL 375 Withdrawal](#) of Petition for prospective petition ID PDX01. Petition void.

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### **Petition ID PDX 02 (Withdrawn by petitioners)**

Prospective Petition Filed: 1/18/2018

#### **Chief Petitioner & Authorized Agents (contact information):**

Adriana Voss-Andreae (chief petitioner)  
1517 SE Holly St.  
Portland OR 97214  
vossandreae@gmail.com

Elbert Mondaine (chief petitioner)  
9115 N. Portsmouth  
Portland, OR 97203  
edmondaine@ctoregon.org

Lenny Dee (authorized agent)  
lenny@onwardoregon.org

Paige Richardson (authorized agent)  
paiger13@gmail.com

#### **Petition Documents:**

[Text of Proposed City Code](#) (via chief petitioner)

[Ballot Title](#) (via City Attorney)

[Ballot Title Challenge](#) (via Challenger Pat McCormick)

[Constitutional Determination Challenge](#) (via Challenger Pat McCormick)

[PDX 02 Petition Withdrawal Form](#) (SEL 375 via Chief Petitioners)

#### **Title of Initiative Petition:**

Portland Climate Action Community Benefits Initiative 2018

#### **Status:**

1/18/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited constitutional review to be completed by 1/25/18.

1/25/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney on 1/26/18 to request ballot title.

1/26/18 - Request for ballot title for prospective initiative petition PDX 02 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 2/2/18.

2/2/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 02. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends February 13, 2018. Notification available [here](#).

2/14/18 - City Auditor receives [ballot title challenge](#) and [Constitutional determination](#) appeal from Portland elector. Petitions for reviews for both items to be scheduled by Multnomah County Circuit Court for a hearing.

2/21/18 - Multnomah County Circuit Court hearing scheduled for 3/23/18. Court will hear oral arguments for both Constitutional and ballot title challenges.

3/21/18 - PDX 02 Chief Petitioners submit [SEL 375 Petition Withdrawal form](#). Petition void.

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### **Petition ID PDX 03**

Prospective Petition Filed: 1/24/2018

Petition campaign finance committee (ORESTAR) ID: 19120, [Honest Elections Portland](#)

#### **Chief Petitioners and Authorized Agents (contact information):**

Ronald A. Buel (chief petitioner)  
1810 NE 70th Ave.  
Portland OR 97213  
Ron@donavoncards.com

B. Elizabeth Trojan (chief petitioner)  
12320 SW 60th

Portland, OR 97219  
elizat8@pobox.com

Dan Meek (authorized agent)  
dan@meek.net

David Delk (authorized agent)  
Davidafd@ymail.com

**Key Petition Documents:**

[Text of Proposed Charter Change \(via chief petitioners\)](#)

[Ballot Title \(prepared by City Attorney\)](#)

[Certification by City Auditor's Office](#)

[Letter to PDX 03 Chief Petitioners](#)

[Multnomah County Results Memo](#)

[Notice of City Measure Election - Measure 26-200 Assigned](#)

**Title of Petition:**

Fair Elections/Clean Governance Charter Amendment

**Status:**

1/24/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited Constitutional review to be completed by 1/31/18.

1/31/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney for request of ballot title on 2/1/18.

2/1/18 - Request for ballot title for prospective initiative petition PDX 03 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 2/8/18.

2/8/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 03. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends February 20, 2018. Notification available [here](#).

2/21/18 - No challenges to ballot title received by City for PDX 03. Cover and signature sheets may be submitted for approval to circulate.

3/12/18- Chief petitioners submit cover and signature sheets for approval to circulate; Auditor's Office approves sheets on 3/14/18.

7/6/18 - PDX 03 Chief Petitioners submit perfected petition with signature sheets purporting to contain 55,194 signatures.

7/6/18 - Auditor's Office begins organization and signature verification of PDX 03 according to Oregon administrative rules and state law. Notification to petitioners regarding qualification to the Nov 6, 2018 ballot required by August 6, 2018.

8/6/18 - City review and Multnomah County Elections statistical sampling show PDX 03 contains approximately 34,227 valid City of Portland registered voter signatures, qualifying it to the Nov. 6, 2018 ballot.

8/9/18 - City certifies measure to the Nov. 6, 2018 ballot with Multnomah County Elections Division via [SEL 802 notice of city measure election form](#); county assigns measure number 26-200.

11/6/18 - Voters pass measure 26-200 ([see official elections results](#))..

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#### **Petition ID PDX 04**

Prospective Petition Filed: 2/21/2018

Petition campaign finance committee (ORESTAR): ID 19344, [Portland Clean Energy Fund](#)

#### **Chief Petitioner & Authorized Agents (contact information):**

Adriana Voss-Andreae (chief petitioner)  
1517 SE Holly St.  
Portland OR 97214  
vossandreae@gmail.com

Elbert Mondaine (chief petitioner)  
9115 N. Portsmouth  
Portland, OR 97203  
edmondaine@ctoregon.org

Lenny Dee (authorized agent)  
lenny@onwardoregon.org

Paige Richardson (authorized agent)  
paiger13@gmail.com

#### **Key Petition Documents:**

[Text of Proposed City Code](#) (via chief petitioners)

[Final Ballot Title](#) (via Mult. Co. Circuit Court Judge Souede)

[Certification by City Auditor's Office](#)

[Letter to PDX 04 Chief Petitioners](#)

[Multnomah County Results Memo](#)

[Notice of Measure Election - Measure Number 26-201 Assigned](#)

**Background Documents:**

Original [Ballot Title](#) (via City Attorney)

[Ballot Title Challenge](#) (via challenger Pat McCormick)

[Ballot Title Challenge](#) (via challenger Robert Short)

[Constitutional Determination Challenge](#) (via Robert Short)

[Mult. Co. Judge Souede Opinion and Order - Constitutional Requirements](#)

[Mult. Co. Judge Souede Opinion and Order - Ballot Title](#)

**Title of Initiative Petition:**

Portland Clean Energy Community Benefits Initiative 2018

**Status:**

2/21/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited Constitutional review to be completed by 2/28/18.

2/28/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney for request of ballot title on 3/1/18.

3/1/18 - Request for ballot title for prospective initiative petition PDX 04 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 3/8/18.

3/5/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 04. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends Wednesday, March 14, 2018. Notification available [here](#).

3/15/18 - Auditor's Office receives two ballot title challenges to PDX 04 and one Constitutional determination appeal. Hearings to review the items to be scheduled by Multnomah County Circuit Court.

3/23/18 - Multnomah County Circuit Court will hold hearing on Constitutional challenge and ballot title challenge April 20, 2018 at 1:30 PM.

4/30/18 - Multnomah County Circuit Court Judge Souede [issues order](#) upholding Constitutional determination of PDX 04.

5/03/18 - Multnomah County Circuit Court Judge Souede [issues opinion and order](#) on final ballot title wording for PDX 04.

5/04/18 - Petitioners submit cover and signature sheets for approval to circulate; Auditor's Office approves sheets as submitted on 5/04/18.

7/5/18 - PDX 04 Chief Petitioners submit perfected petition with signature sheets purporting to contain 60,911 signatures.

7/5/18 - Auditor's Office begins organization and signature verification of PDX 04 according to Oregon administrative rules and state law. Notification to petitioners regarding qualification to the Nov 6, 2018 ballot required by August 6, 2018.

7/6/18 - PDX 04 Petitioners return additional 817 signatures for a total purported signature count of 61,728 by the deadline.

7/27/18 - City review and Multnomah County Elections statistical sampling show PDX 04 contains approximately 39,755 valid City of Portland registered voter signatures, qualifying it to the Nov. 6, 2018 ballot.

7/27/18 - Per Portland City Code 2.04.100 A., measure will be certified with Multnomah County Elections Division to appear on the Nov. 6, 2018 ballot, receive measure number, after 30-day period to allow for potential Council action. Council may adopt petition by non-emergency ordinance. 30-day period ends August 27, 2018.

8/29/18 - Council does not adopt petition and the [measure is certified to the Nov. 6, 2018 ballot](#). Multnomah County Elections division assigns measure number 26-201.

11/6/18 - Voters pass measure 26-201 ([see official elections results](#)).

Petition ID PDX 01



# Honest Elections City of Portland Charter Amendment

DEC 20 04:09 PM  
AUDITOR

Whereas, the people of City of Portland find that limiting large contributions and expenditures in political campaigns would avoid the reality and appearance of corruption, strengthen democratic institutions, enhance public confidence in government, and reduce the cost of running for office, thereby enabling a greater diversity of persons to seek public office, a new Section 3-107 to the City of Portland Charter, shall read as follows:

## 1. Contributions in City of Portland Candidate Elections.

- a. An Individual or Entity may make Contributions only as specifically allowed to be received in this Section 3-107.
- b. A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
  - (1) Not more than five hundred dollars (\$500) from an Individual or a Political Committee other than a Small Donor Committee;
  - (2) Any amount from a Small Donor Committee;
  - (3) No amount from any other Entity.
  - (4) A loan balance of not more than five thousand dollars (\$5,000) from the candidate.
- c. Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.

## 2. Expenditures in City of Portland Candidate Elections.

- a. No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Section.
- b. An Entity shall register as a Political Committee under Oregon law within three (3) business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.
- c. Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:
  - (1) An Individual may make aggregate Independent Expenditures of not more than five thousand dollars (\$5,000).

- (2) A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 1 above.
- (3) A Political Committee may make aggregate Independent Expenditures of not more than ten thousand dollars (\$10,000), provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding five hundred dollars (\$500) per Individual per year.

**3. Timely Disclosure of Large Contributions and Expenditures.**

- a. Each Communication to voters related to a City of Portland Candidate Election shall prominently disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:
  - (1) The names of all Political Committees and other Entities that have paid to provide or present it; and
  - (2) For each of the largest five Dominant Contributors to each such Political Committee or Entity in the current Election Cycle:
    - (a) The name of the Individual or Entity providing the Contribution.
    - (b) The types of businesses from which the maker of the Contribution or Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
  - (3) For each of the largest five Dominant Independent Spenders paying to provide or present it:
    - (a) The name of the Individual or Entity providing the Independent Expenditure.
    - (b) The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
- b. If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

**4. Coordination with Public Funding of Campaigns.**

- a. A Candidate or Candidate Committee may receive during any Election Cycle any amount provided by a system of Public Funding of Campaigns.
- b. Any Candidate participating in a system of Public Funding of Campaigns may accept Contributions of not more than two hundred fifty dollars (\$250) from an Individual during any Primary Election Period or General Election Period.
- c. Any Contribution to a Candidate or Candidate Committee from a Small Donor Committee shall be attributed ratably to the Individuals whose Contributions to the Small Donor Committee enabled its Contribution to the Candidate or Candidate Committee.

**5. Implementation and Enforcement.**

- a. The provisions of this Section shall be implemented by ordinance to be operative not later than September 1, 2019.
- b. Each violation of any provision in this Section shall be punishable by imposition of a civil fine which is not less than two nor more than twenty times the amount of the unlawful Contribution or Expenditure or Independent Expenditure.

**6. Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

**7. Severability.**

For the purpose of determining constitutionality, every section, subsection, and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections, and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection, and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

**8. Definitions.**

Unless otherwise indicated by the text or context of this Section, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of November 8, 2016. Terms found therein or defined below are capitalized in this Section.

- a. "Candidate" has the meaning set forth at ORS 260.005(1).
- b. "Candidate Committee" has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term "principal campaign committee."
- c. "City of Portland Candidate Election" means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.
- d. "Communication" means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, signs smaller than 6 square feet, or a distribution of five hundred (500) or fewer substantially similar pieces of literature within any 10-day period.
- e. "Contribution" has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include (1) funds provided by government systems of public funding of campaigns or (2) providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.
- f. "Dominant Contributor" means any Individual or Entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee.
- g. "Dominant Independent Spender" means any Individual or Entity which expends more than one thousand dollars (\$1,000) during an Election Cycle to support or oppose a particular Candidate.
- h. "Election cycle" means:
  - (1) Generally, the period between an election at which a candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
  - (2) For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
  - (3) For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.
- i. "Entity" means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.
- j. "Expenditure" has the meaning set forth at ORS 260.005(8) and 260.007, as of November 8, 2016, except that it does not include Communication to

its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing the outcome of contests.

- k. "General Election Period" means the period beginning the day after the biennial primary election and ending the day of the biennial general election.
- l. "Individual" means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Section expresses a limitation or prohibition, "Individual" means any human being.
- m. "Membership Organization" means an incorporated or unincorporated nonprofit organization having members who pay dues or affirmatively choose to join and support the organization.
- n. "Primary Election Period" means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.
- o. "Prominently Disclose" means:
  - (1) The Communication shall state:
  - (2) The disclosure shall be:
    - (a) Current to within ten (10) days of the printing of printed material or within five (5) days of the transmitting of a video or audio communication; and
    - (b) Comprehensible to a person with average reading, vision, and hearing faculties, with:
      - (i) any printed disclosure appearing in type not smaller than 8 points;
      - (ii) any video disclosure remaining readable on the regular screen (not closed captioning) for a sufficient time to be read by a person with average vision and reading ability; and
      - (iii) any auditory disclosure spoken at a maximum rate of five words per second.
- p. "Public Funding of Campaigns" means a system of providing funds from one or more government sources to qualifying candidates pursuant to legislation adopted by a public body.
- q. "Small Donor Committee" means a Political Committee which cannot accept Contributions in amounts exceeding one hundred dollars (\$100) per Individual contributor per calendar year.

# Withdrawal Petition

SEL 375

rev 01/16 ORS 250.029  
OAR 165-010-0005, 165-014-0005

Chief petitioners of an initiative or referendum petition, the chief petitioner of a recall petition or the chief sponsor of a political party formation may withdraw a petition any time prior to submitting the required number of signatures for verification. Once the petition has been withdrawn it may not be reactivated. Chief petitioners or the chief sponsor would be required to re-file the petition and begin the process again.

### Filing Officer

State  County for both county and district petitions  City

### Type

Sponsorship  Initiative  Referendum  Recall  Political Party Formation

### Petition Information

#### Petition Title or Number

FAIR ELECTIONS/CLEAN Governance Charter Amendment

#### Date Prospective Petition Filed


12-20-17

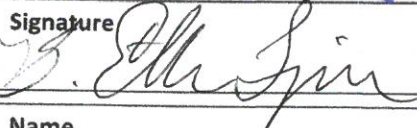
#### General Election Year, if applicable

2018

### Withdrawal Reason Optional.

### Chief Petitioner/ Sponsor Information All chief petitioners must sign the same form.

Name Ronald A. Buel	Contact Phone 503-358-866	Email Address RONB.DONAVONCARDS.COM
Signature 	Date Signed R.A.B. 1/5/18	

Name B. ELIZABETH TROJAN	Contact Phone 503-246-7850	Email Address elizat8@pobox.com
Signature 	Date Signed 1/5/18	

Name	Contact Phone	Email Address
Signature	Date Signed	

Petition ID PDX 02

The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be made part of the Portland City Code.

**Section 1 – Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City’s Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City’s overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

**Section 2 – Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland’s Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.



2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the “Portland Climate Action Community Benefit Fund.” The money in this fund will be used to finance programs that meet the following priorities:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a “Portland Climate Action Community Benefit Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### **Section 3. Definitions**

Unless otherwise defined in this section, terms that are defined in Portland’s Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. “Bank” has the same meaning as used in ORS § 706.008(1).
2. “City” means the City of Portland.
3. “Clean renewable energy” means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. “Energy Efficiency” means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.
5. “Greenhouse gas reduction projects” means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. “Greenhouse gas sequestration” means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as “regenerative agriculture.”
7. “Green infrastructure” means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. “Large retailer” means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term “Large Retailer” does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;

- iii. any cooperative recognized under state or federal law; or
  - iv. a federal or state credit union.
9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
  10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
  11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
  12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
  13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
  14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Portland's Business License Law, Chapter 7.02 of the Portland City Code, is hereby amended to require Large Retailers to pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;

- b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and
  - d. Retail sales of qualified health care services.
3. **Amendment to Portland City Code PCC 7.02.600 G.** Portland City Code 7.02.600G is amended to read as follows:
  - a. Taxes Based on or Measured by Net Income. “In determining income, no deduction is allowed for taxes based on or measured by net income or for the surcharge imposed by this measure. No Deduction is allowed for the federal built-in gains tax.” (Italicized portion new).
4. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 702.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

#### **Section 6. Portland Climate Action Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the “Portland Climate Action Community Benefits Fund” (“Fund”).
2. Money in the Portland Climate Action Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:

- a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
  4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
  5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

## **Section 7. The Portland Climate Action Community Benefits Committee**

1. There shall be established a "Portland Climate Action Community Benefit Fund Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection

- 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
4. The Mayor shall appoint members of the Committee based on the following background and expertise:
    - a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82<sup>nd</sup> Avenue.
    - b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
    - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
      - i. Residential renewable energy and energy efficiency projects;
      - ii. Commercial renewable energy and energy efficiency projects;
      - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
      - iv. Experience promoting minority-owned and/or women-owned businesses;
      - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
      - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
    - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
  5. The Committee shall:
    - a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
    - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
    - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.

- d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.
  - f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

## **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.

- ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.
    - iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Job Training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10%: - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
- 2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82<sup>nd</sup> Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.



- c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses.
  - d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

**Section 9. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

# Notice of Receipt of Ballot Title (02/02/18)

## NOTICE OF RECEIPT OF BALLOT TITLE

Notice is hereby given that a ballot title for an initiative petition has been filed with the Elections Office of the City of Portland on February 2, 2018.

The ballot title is as follows:

### **CAPTION**

Authorizes surcharge on certain retailers; funds clean energy, job training.

### **QUESTION**

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs?

### **SUMMARY**

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Climate Action Community Benefit Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

Clean Energy Projects (approximately 50-75%): renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species
- Heating, lighting, water and cooling efficiencies
- Green building design
- Urban tree canopy

Clean Jobs Training (approximately 20-25%): training, apprenticeships that prioritize workforce development for disadvantaged workers, such as:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

Future Innovation (approximately 5%)

Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions.

The City Auditor has determined this measure meets the requirements of Article IV, Section 1(2) (d) and (5) of the Oregon Constitution. An elector may file a petition for review of this ballot title in the Multnomah County Circuit Court no later than 5:00 P.M. on Tuesday, February 13, 2018.

MARY HULL CABALLERO

Portland City Auditor

February 13, 2018

**VIA MESSENGR**

Mary Hull Caballero, Auditor  
City of Portland  
1221 SW 4<sup>th</sup> Ave  
Portland, OR 97204

Re: Petition to Review Determination of Compliance with Constitutional Provisions, *Pat McCormick v. Mary Hull Caballero, City of Portland Auditor*  
AND  
Petition for Different Measure Title – *Pat McCormick v. Tracy Reeve, City Attorney*,  
Multnomah County Circuit Court

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Dear Mary:

Enclosed are copies of:

1. Petition for Different Measure Title – *Pat McCormick v. Tracy Reeve, City Attorney*; and
2. Petition to Review Determination of Compliance with Constitutional Provisions, *Pat McCormick v. Mary Hull Caballero, City of Portland Auditor*

We filed both Petitions with the Multnomah County Circuit Court.

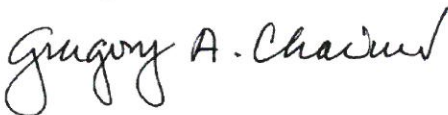
We are providing the Petition for Different Measure Title under ORS 250.296(2).

Through a separate letter, we are asking the City Attorney to accept service in both cases.

Please let us know if you have any questions or need additional information.

Very truly yours,

Davis Wright Tremaine LLP



Gregory A. Chaimov  
GAC/jan  
Enclosures

cc: Tracy Reeve

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

PAT MCCORMICK,

Petitioner,

Case No.

v.  
TRACY REEVE, City Attorney,

**PETITION FOR DIFFERENT  
MEASURE TITLE**

Respondent.

Petitioner alleges:

1.

Petitioner is an elector of the City of Portland.

2.

Respondent is the City Attorney for the City of Portland.

3.

On or about January 18, 2018, Chief Petitioners filed prospective petition PDX 02 ("Petition PDX 02"). A true and accurate copy of the Petition is attached as Exhibit 1.

4.

On or about February 2, 2018, Respondent filed the ballot title for Petition PDX 02 with the City of Portland elections officer. A true and accurate copy of ballot title is attached as Exhibit 2.

5.

Petitioner is dissatisfied with the measure title. The measure title is insufficient, not concise, or unfair for the following reasons:

a. The caption does not reasonably identify the subject of the measure as required by

1 ORS 250.035(1)(a) for the following reasons:

2 (1) The subject of the measure is not a “surcharge on certain retailers” but an  
3 increase in the business license tax for certain businesses, measured by revenues from certain  
4 retail sales.

5 (2) The caption is inaccurate by stating the measure “authorizes,” *i.e.*, gives  
6 permission for, a surcharge, when the measure itself imposes the surcharge.

7 (3) The caption is incomplete and misleading by failing to describe the nature  
8 of the tax on which the measure imposes the surcharge—revenues from certain sales—when  
9 there are many possibilities for the basis for the tax that the caption as drafted covers, such as on  
10 the value of property.

11 (4) The caption is vague and misleading by using the term surcharge to  
12 describe the tax the measure imposes. The term surcharge has multiple meanings, including  
13 meanings other than a charge that is in addition to an existing charge. The use of surcharge may  
14 also confuse and mislead voters because the term is different from the term surtax, which is the  
15 term the code uses to describe an incremental addition to a tax.

16 (5) The caption is too specific, and, therefore, under-inclusive, by describing  
17 only some of the activities the measure could fund; the caption should refer to the entire set of  
18 activities through a more encompassing term.

19 b. The question does not plainly phrase the chief purpose of the measure as required  
20 by ORS 250.035(1)(b) for the following reasons:

21 (1) The question carries forward the problems that prevent the caption from  
22 reasonably identifying the subject of the measure.

23 (2) The question omits essential information by failing to define or explain the  
24 scope, nature, or source of the “Portland revenues” that are subject to the surcharge.

25 c. The summary does not adequately summarize the measure and its major effect as  
26 required by ORS 250.035(1)(c) for the following reasons:

1 (1) The summary carries forward the problems that prevent the caption from  
2 reasonably identifying the subject of the measure and the question from plainly phrasing the  
3 chief purpose of the measure.

4 (2) The summary fails to provide any context of existing law, such as what  
5 businesses pay the tax imposed by the Business License Law and how the tax the measure  
6 imposes interacts with the existing tax scheme.

7 (3) The summary provides examples of projects the measure's tax could fund  
8 instead of providing an explanation of the actual changes the measure makes to current law.

9 (4) The summary provides an incomplete and inadequate explanation of the  
10 taxpayers and activities subject to the surcharge and not subject to the surcharge.

11 (5) The summary fails to alert voters that key terms that affect the scope of the  
12 measure are undefined, including the "consumer" who is an essential part of a covered sale.

13 (6) The summary omits mention of the unique bureaucracy the measure  
14 creates and the powers and obligations the measure grants the bureaucracy.

15 6.

16 This Court should certify a measure title that reads:

17 **Caption:** Imposes tax on certain retailers' sales; funds energy-related projects.

18 **Question:** Shall City impose 1% tax on sales of goods/services by "large retailers"  
19 (defined) to fund Climate Action Plan?

20 **Summary:** Measure amends Portland Business License Tax, which taxes businesses  
21 based on net income, by imposing a 1% tax on gross sales of goods and services in Portland by  
22 "large retailers" (defined as businesses with gross retail sales nationally exceeding \$1 billion and  
23 retail sales within Portland of at least \$500,000 in the prior tax year). Retail sales include the  
24 sale of services, such as banking and insurance.

25 Covers sales to "consumers" (undefined), excludes retail sales of qualified groceries,  
26 medicine and drugs, and health care services. Measure exempts utilities; cooperatives recognized

1 under state or federal law; federal or state credit unions; manufacturers.

2 Measure directs proceeds to the Portland Climate Action Community Benefits Fund  
3 dedicated to funding grants to nonprofits for: renewable energy and energy efficiency projects;  
4 regenerative agriculture and green infrastructure projects; job training, apprenticeship programs.

5 Measure establishes nine-member committee to oversee the fund, solicit and evaluate  
6 program applications, and recommend programs to the Mayor and City Council for funding.  
7 Allows committee to hire own staff; limits certain administrative costs. Other provisions.

8 WHEREFORE, Petitioner prays for a judgment as follows:

9 1. Declaring the measure title to be insufficient, not concise, and unfair, and not  
10 conforming to the requirements of ORS 250.035.

11 2. Certifying to the County Clerk a ballot title that conforms to the requirements of  
12 ORS 250.035 as set forth in paragraph 6 above.

13 3. Awarding Petitioner the costs and disbursements incurred herein.

14 4. Awarding any other relief the Court considers just and equitable.

15 DATED this 13<sup>th</sup> day of February, 2018.

16 DAVIS WRIGHT TREMAINE LLP

17

18 By /s/ Gregory A. Chaimov

19 Gregory A. Chaimov, OSB #822180

20 Telephone: 503-778-5328

21 E-mail: gregorychaimov@dwt.com

22 Facsimile: 503-778-5299

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Attorneys for Petitioner

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## PORTLAND CLIMATE ACTION COMMUNITY BENEFITS INITIATIVE 2018

**The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be made part of the Portland City Code.**

### **Section 1 — Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City's Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City's overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

### **Section 2 — Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland's Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.
2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,0000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Climate Action Community Benefit

Fund.” The money in this fund will be used to finance programs that meet the following priorities:

- a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a “Portland Climate Action Community Benefit Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### Section 3. Definitions

Unless otherwise defined in this section, terms that are defined in Portland’s Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. “Bank” has the same meaning as used in ORS § 706.008(1).
2. “City” means the City of Portland.
3. “Clean renewable energy” means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native American or other communities that rely on such species shall not be appropriate for support under this Measure.
4. “Energy Efficiency” means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.

5. “Greenhouse gas reduction projects” means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. “Greenhouse gas sequestration” means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as “regenerative agriculture.”
7. “Green infrastructure” means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. “Large retailer” means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term “Large Retailer” does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;
    - iii. any cooperative recognized under state or federal law; or
    - iv. a federal or state credit union.
9. “Program[s]” means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
10. “Qualified groceries” means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program (“SNAP”).
11. “Qualified medicine or drugs” means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
12. “Qualified health care services” means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities

- or rehabilitation facilities. This definition includes but is not limited to all services defined as “health care services” under Oregon statute ORS 750.005.
13. “National gross revenue” means the gross revenue a business receives nationally in a given year from retail sales.
  14. “Non-profit organization” means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. “Regenerative agriculture” means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. “Retail sale” means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Portland’s Business License Law, Chapter 7.02 of the Portland City Code, is hereby amended to require Large Retailers to pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and
  - d. Retail sales of qualified health care services.
3. **Amendment to Portland City Code PCC 7.02.600 G.** Portland City Code 7.02.600G is amended to read as follows:
  - a. Taxes Based on or Measured by Net Income. “In determining income, no deduction is allowed for taxes based on or measured by net income or for the surcharge imposed by this measure. No Deduction is allowed for the federal built-in gains tax.” (Italicized portion new).
4. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement

- the goals and purposes of the measure consistent with the processes provided in Portland City Code 702.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
  3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
  4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

### **Section 6. Portland Climate Action Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the “Portland Climate Action Community Benefits Fund” (“Fund”).
2. Money in the Portland Climate Action Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding

recommendation, they shall provide the Committee with a written explanation of the decision.

### **Section 7. The Portland Climate Action Community Benefits Committee**

1. There shall be established a “Portland Climate Action Community Benefit Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
4. The Mayor shall appoint members of the Committee based on the following background and expertise:
  - a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82nd Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City’s Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:

- a. Establish and maintain a public website that includes the Committee’s membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee’s website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant non-profit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee’s website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee’s website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the City’s Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.
  - f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee’s homepage and, if goals are not being met, shall be the Committee’s top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City’s Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

## **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.
    - iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Job Training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82nd Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.



- c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses.
  - d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

**Section 9. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

## Auditor Mary Hull Caballero

Promoting open and accountable government

More Contact Info (<http://www.portlandoregon.gov/auditor/article/564229>)

## Notice of Receipt of Ballot Title (02/02/18)

### NOTICE OF RECEIPT OF BALLOT TITLE

Notice is hereby given that a ballot title for an initiative petition has been filed with the Elections Office of the City of Portland on February 2, 2018.

The ballot title is as follows:

#### CAPTION

Authorizes surcharge on certain retailers; funds clean energy, job training.

#### QUESTION

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs?

#### SUMMARY

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Climate Action Community Benefit Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

Clean Energy Projects (approximately 50-75%): renewable energy, energy efficiency and green infrastructure projects, such as:

Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species

Heating, lighting, water and cooling efficiencies

Green building design

Urban tree canopy

Clean Jobs Training (approximately 20-25%): training, apprenticeships that prioritize workforce development for disadvantaged workers, such as:

Communities of color

Women

Persons with disabilities

Chronically underemployed

Future Innovation (approximately 5%)

Accountability measures:

Resident committee makes funding recommendations, oversees progress on goals.

Annual financial audit; performance audit every two years.

Administrative costs cannot exceed 5%.

Other provisions.

The City Auditor has determined this measure meets the requirements of Article IV, Section 1(2) (d) and (5) of the Oregon Constitution. An elector may file a petition for review of this ballot title in the Multnomah County Circuit Court no later than 5:00 P.M. on Tuesday, February 13, 2018.

MARY HULL CABALLERO

Portland City Auditor

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

PAT MCCORMICK,

Petitioner,

v.

MARY HULL CABALLERO, CITY OF  
PORTLAND AUDITOR,

Respondent.

Case No.

**PETITION TO REVIEW  
DETERMINATION OF COMPLIANCE  
WITH CONSTITUTIONAL  
PROVISIONS**

Petitioner alleges:

1.

Petitioner is an elector of the City of Portland.

2.

Respondent is the Auditor of the City of Portland and the city elections officer for purposes of ORS 250.270.

3.

On or about January 18, 2018, Chief Petitioners filed prospective petition PDX 02 (“Petition PDX 02”). A true and accurate copy of the Petition is attached as Exhibit 1.

4.

On or about January 25, 2018, Respondent determined that Petition PDX 02 met the requirements of section 1 (2)(d) and (5), Article IV of the Oregon Constitution.. A true and accurate copy of the determination is attached as Exhibit 2.

5.

Petitioner is dissatisfied with the determination. Petition PDX 02 does not comply with

1 section 1 (2)(d), Article IV of the Oregon Constitution because the Petition does not include the  
2 full text of the law or amendment the Petition proposes.

3 WHEREFORE, Petitioner prays for a judgment as follows:

4 1. Determining that Petition PDX 02 does not comply with section 1 (2)(d), Article  
5 IV of the Oregon Constitution.

6 2. Awarding Petitioner the costs and disbursements incurred herein.

7 3. Awarding any other relief the Court considers just and equitable.

8 DATED this 13<sup>th</sup> day of February, 2018.

9 DAVIS WRIGHT TREMAINE LLP

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By /s/ Gregory A. Chaimov

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Gregory A. Chaimov, OSB #822180

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E-mail: gregorychaimov@dwt.com

Telephone: 503-778-5328

Facsimile: 503-778-5299

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Attorneys for Petitioner

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## PORTLAND CLIMATE ACTION COMMUNITY BENEFITS INITIATIVE 2018

**The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be made part of the Portland City Code.**

### **Section 1 — Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City's Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City's overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

### **Section 2 — Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland's Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.
2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,0000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Climate Action Community Benefit

Fund.” The money in this fund will be used to finance programs that meet the following priorities:

- a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a “Portland Climate Action Community Benefit Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### Section 3. Definitions

Unless otherwise defined in this section, terms that are defined in Portland’s Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. “Bank” has the same meaning as used in ORS § 706.008(1).
2. “City” means the City of Portland.
3. “Clean renewable energy” means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native American or other communities that rely on such species shall not be appropriate for support under this Measure.
4. “Energy Efficiency” means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.

5. “Greenhouse gas reduction projects” means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. “Greenhouse gas sequestration” means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as “regenerative agriculture.”
7. “Green infrastructure” means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. “Large retailer” means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term “Large Retailer” does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;
    - iii. any cooperative recognized under state or federal law; or
    - iv. a federal or state credit union.
9. “Program[s]” means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
10. “Qualified groceries” means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program (“SNAP”).
11. “Qualified medicine or drugs” means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
12. “Qualified health care services” means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities

- or rehabilitation facilities. This definition includes but is not limited to all services defined as “health care services” under Oregon statute ORS 750.005.
13. “National gross revenue” means the gross revenue a business receives nationally in a given year from retail sales.
  14. “Non-profit organization” means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. “Regenerative agriculture” means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. “Retail sale” means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Portland’s Business License Law, Chapter 7.02 of the Portland City Code, is hereby amended to require Large Retailers to pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and
  - d. Retail sales of qualified health care services.
3. **Amendment to Portland City Code PCC 7.02.600 G.** Portland City Code 7.02.600G is amended to read as follows:
  - a. Taxes Based on or Measured by Net Income. “In determining income, no deduction is allowed for taxes based on or measured by net income or for the surcharge imposed by this measure. No Deduction is allowed for the federal built-in gains tax.” (Italicized portion new).
4. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement



- the goals and purposes of the measure consistent with the processes provided in Portland City Code 702.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
  3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
  4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

### **Section 6. Portland Climate Action Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the “Portland Climate Action Community Benefits Fund” (“Fund”).
2. Money in the Portland Climate Action Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding

recommendation, they shall provide the Committee with a written explanation of the decision.

### **Section 7. The Portland Climate Action Community Benefits Committee**

1. There shall be established a “Portland Climate Action Community Benefit Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
4. The Mayor shall appoint members of the Committee based on the following background and expertise:
  - a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82nd Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City’s Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:

- a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant non-profit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.
  - f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

## **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.
    - iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Job Training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82nd Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.

- c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses.
  - d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

**Section 9. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

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Petition ID PDX 02

Prospective Petition Filed: 1/18/2018

Chief Petitioner & Authorized Agents (contact information):

Adriana Voss-Andreae (chief petitioner)  
1517 SE Holly St.  
Portland OR 97214  
vossandreae@gmail.com

Elbert Mondaine (chief petitioner)  
9115 N. Portsmouth  
Portland, OR 97203  
edmondaine@ctoregon.org

Lenny Dee (authorized agent)  
lenny@onwardoregon.org

Paige Richardson (authorized agent)  
paiger13@gmail.com  
Petition Documents:

Text of Proposed City Code (<http://www.portlandoregon.gov/auditor/article/669995>) (via chief petitioner)

Ballot Title (<http://www.portlandoregon.gov/auditor/article/671710>) (via City Attorney)

Title of Initiative Petition:

Portland Climate Action Community Benefits Initiative 2018

Status:

1/18/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited constitutional review to be completed by 1/25/18.

1/25/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney on 1/26/18 to request ballot title.

1/26/18 - Request for ballot title for prospective initiative petition PDX 02 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 2/2/18.

2/2/18 - City Attorney files ballot title (<http://www.portlandoregon.gov/auditor/article/671710>) with City Elections Office for PDX 02. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends February 13, 2018. Notification available here (<http://www.portlandoregon.gov/auditor/article/671714>).

# Portland Climate Action Community Benefits Initiative 2018

## CAPTION

Authorizes surcharge on certain retailers; funds clean energy, job training. (10)

## QUESTION

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs? (20)

## SUMMARY

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Climate Action Community Benefit Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species
- Heating, lighting, water and cooling efficiencies
- Green building design
- Urban tree canopy

**Clean Jobs Training (approximately 20-25%):** training, apprenticeships that prioritize workforce development for disadvantaged workers, such as:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions. (175)

# Withdrawal Petition

SEL 375  
rev 01/18 ORS 250.029  
OAR 165-010-0005, 165-014-0005

Chief petitioners of an initiative or referendum petition, the chief petitioner of a recall petition or the chief sponsor of a political party formation may withdraw a petition any time prior to submitting the required number of signatures for verification. Once the petition has been withdrawn it may not be reactivated. Chief petitioners or the chief sponsor would be required to re-file the petition and begin the process again.

## Filing Officer

State  County for both county and district petitions  City

## Type

Sponsorship  Initiative  Referendum  Recall  Political Party Formation

## Petition Information

Petition Title or Number  
PDX02

Date Prospective Petition Filed  
1/18/2018

General Election Year, if applicable  
2018

## Withdrawal Reason Optional.

## Chief Petitioner/ Sponsor Information All chief petitioners must sign the same form.

Name Adriana Voss-Andreae	Contact Phone 503-329-5302	Email Address vossandreae@gmail.com
Signature 		Date Signed 3/20/2018
Name ED Mondaine	Contact Phone 503-422-6343	Email Address edmondaine@ctoregon.org
Signature 		Date Signed 3/19/2018
Name	Contact Phone	Email Address
Signature		Date Signed



Petition ID PDX 03

## Honest Elections City of Portland Charter Amendment

Whereas, the people of City of Portland find that limiting large contributions and expenditures in political campaigns would avoid the reality and appearance of corruption, including *quid pro quo* corruption, a new Article 3 to Chapter 3 of the City of Portland Charter, shall read as follows:

### Article 3 Campaign Finance in Candidate Elections

#### 3-301. Contributions in City of Portland Candidate Elections.

- (a) An Individual or Entity may make Contributions only as specifically allowed to be received in this Article.
- (b) A Candidate or Candidate Committee may receive only the following Contributions during any Election Cycle:
  - (1) Not more than five hundred dollars (\$500) from an Individual or a Political Committee other than a Small Donor Committee;
  - (2) Any amount from a qualified Small Donor Committee;
  - (3) A loan balance of not more than five thousand dollars (\$5,000) from the candidate;
  - (4) No amount from any other Entity, except as provided in Section 3-304 below.
- (c) Individuals shall have the right to make Contributions by payroll deduction by any private or public employer upon the employer's agreement or if such deduction is available to the employees for any other purpose.

#### 3-302. Expenditures in City of Portland Candidate Elections.

- (a) No Individual or Entity shall expend funds to support or oppose a Candidate, except those collected from the sources and under the Contribution limits set forth in this Article.
- (b) An Entity shall register as a Political Committee under Oregon law within three (3) business days of making aggregate Independent Expenditures exceeding \$750 in any Election Cycle to support or oppose one or more Candidates in any City of Portland Candidate Election.
- (c) Only the following Independent Expenditures are allowed per Election Cycle to support or oppose one or more Candidates in any particular City of Portland Candidate Election:

- (1) An Individual may make aggregate Independent Expenditures of not more than five thousand dollars (\$5,000).
- (2) A Small Donor Committee may make Independent Expenditures in any amounts from funds contributed in compliance with Section 3-301 above.
- (3) A Political Committee may make aggregate Independent Expenditures of not more than ten thousand dollars (\$10,000), provided that the Independent Expenditures are funded by means of Contributions to the Political Committee by Individuals in amounts not exceeding five hundred dollars (\$500) per Individual per year.

**3-303. Timely Disclosure of Large Contributions and Expenditures.**

- (a) Each Communication to voters related to a City of Portland Candidate Election shall Prominently Disclose the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication, including:
  - (1) The names of any Political Committees and other Entities that have paid to provide or present it; and
  - (2) For each of the five Dominant Contributors providing the largest amounts of funding to each such Political Committee or Entity in the current Election Cycle:
    - a) The name of the Individual or Entity providing the Contribution.
    - b) The types of businesses from which the maker of the Contribution has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
  - (3) For each of the largest five Dominant Independent Spenders paying to provide or present it:
    - a) The name of the Individual or Entity providing the Independent Expenditure.
    - b) The types of businesses from which the maker of the Independent Expenditure has obtained a majority of income over the previous 5 years, with each business identified by the name associated with its 6-digit code of the North American Industry Classification System (NAICS).
- (b) If any of the five largest Dominant Contributors or Dominant Independent Spenders is a Political Committee (other than a Small Donor Committee)

or nonprofit organization, the prominent disclosure shall include its top three funders during the current Election Cycle.

- (c) The disclosure shall be current to within ten (10) days of the printing of printed material or within five (5) days of the transmitting of a video or audio communication.

**3-304. Coordination with Public Funding of Campaigns.**

A candidate participating in a government system of public funding of campaigns (including the Public Election Fund established under Portland City Code Chapter 2.16) may receive any amount that such system allows a participating candidate to receive.

**3-305. Implementation and Enforcement.**

- (a) The provisions of this Article shall be implemented by ordinance to be operative not later than September 1, 2019.
- (b) Each violation of any provision in this Article shall be punishable by imposition of a civil fine which is not less than two nor more than twenty times the amount of the unlawful Contribution or Expenditure or Independent Expenditure at issue.
- (c) Any person may file a written complaint of a violation of any of the Provisions with the City Auditor.
- (d) The City Auditor, otherwise having reason to believe that a violation of any provision has occurred, shall issue a complaint regarding such violation.
- (e) Upon receipt or issuance of a complaint, the City Auditor:
  - (1) Shall examine the complaint to determine whether a violation has occurred and shall make any investigation necessary.
  - (2) Within two business days of receiving or issuing a complaint, shall issue a notification, including a copy of the complaint, to every person who is the object of the complaint.
  - (3) Shall accept written materials supporting or opposing the complaint for a period of 10 business days following any such notification.
  - (4) Shall render a decision on the complaint within 10 business days of the close of the material submission period.
- (f) If the complaint is received or issued within 30 days of the date of the election involving the object of the complaint, then all time periods stated in subsections (e)(3) and (e)(4) above shall be reduced by one-half.

- (g) The City Auditor may issue subpoenas to compel the production of records, documents, books, papers, memoranda or other information necessary to determine compliance with the provisions of this Article.
- (h) Upon finding a violation of the requirement for timely disclosure set forth in Section 3-303 above, the City Auditor shall determine the true original sources of the Contributions and/or Independent Expenditures used to fund the Communication at issue and shall immediately issue a statement to all interested parties and news organizations containing all of the information about the involved donor(s) required by Section 3-303 above.
- (i) The complainant or any person who is the object of the complaint may, within 30 days of the issuance of the decision, appeal that order to the appropriate Circuit Court as an agency order in other than a contested case.
- (j) The decision in the matter shall be deemed final, following completion of any judicial review. Such decision shall be enforced by the City of Portland. If the decision is not enforced within thirty (30) days of the decision becoming final, the complainant may bring a civil action in a representative capacity for the collection of the applicable civil penalty, payable to the City of Portland, and for any appropriate equitable relief.

**3-306. Adjustments.**

All dollar amounts shall be adjusted on January 1 of each odd-numbered year to reflect an appropriate measure of price inflation, rounded to the nearest dollar.

**3-307. Severability.**

For the purpose of determining constitutionality, every section, subsection, and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections, and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection, and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

**3-308. Definitions.**

Unless otherwise indicated by the text or context of this Article, all terms shall have the definitions at Chapter 260 of Oregon Revised Statutes, as of January 1, 2018. Terms found therein or defined below are capitalized in this Article.

- (a) "Candidate" has the meaning set forth at ORS 260.005(1).

- (b) "Candidate Committee" has the meaning set forth at ORS 260.039 - 260.041, as of November 8, 2016, for the term "principal campaign committee."
- (c) "City of Portland Candidate Election" means an election, including a primary election, to select persons to serve (or cease serving) in public offices of City of Portland.
- (d) "Communication" means any written, printed, digital, electronic or broadcast communications but does not include communication by means of small items worn or carried by Individuals, bumper stickers, Small Signs, or a distribution of five hundred (500) or fewer substantially similar pieces of literature within any 10-day period.
- (e) "Contribution" has the meaning set forth at ORS 260.005(3) and 260.007, as of November 8, 2016, except it does not include (1) funds provided by government systems of public funding of campaigns or (2) providing rooms, phones, and internet access for use by a candidate committee free or at a reduced charge.
- (f) "Dominant Contributor" means any Individual or Entity which contributes more than one thousand dollars (\$1,000) during an Election Cycle to a Candidate Committee or Political Committee.
- (g) "Dominant Independent Spender" means any Individual or Entity which expends more than one thousand dollars (\$1,000) during an Election Cycle to support or oppose a particular Candidate.
- (h) "Election cycle" means:
  - (1) Generally, the period between an election at which a candidate is elected and the next election for that same office, disregarding any intervening primary or nominating election, any recall election, or any special election called to fill a vacancy.
  - (2) For any recall election: the period beginning the day that the recall election is called or declared and ending at midnight of the day of the recall election.
  - (3) For any special election called to fill a vacancy: the period beginning the day that the special election is called or declared and ending at midnight of the day of the election.
- (i) "Entity" means any corporation, partnership, limited liability company, proprietorship, Candidate Committee, Political Committee, or other form of organization which creates an entity which is legally separate from an Individual.
- (j) "Expenditure" has the meaning set forth at ORS 260.005(8) and ORS 260.007, as of January 1, 2018, except that:

- (1) It does not include a Communication to its members, and not to the public, by a Membership Organization not organized primarily for the purpose of influencing an election.
  - (2) The exception in ORS 260.007(7) does not apply.
- (k) "General Election Period" means the period beginning the day after the biennial primary election and ending the day of the biennial general election.
- (l) "Individual" means a citizen or resident alien of the United States entitled to vote in federal elections; however, when this Article expresses a limitation or prohibition, "Individual" means any human being.
- (m) "Membership Organization" means a nonprofit organization, not formed or operated for the purpose of conducting or promoting commercial enterprise, which has Individual members who have taken action to join the organization and have made a payment of money or volunteer time to maintain membership in the organization.
- (1) It cannot have commercial enterprises as members.
  - (2) It can transfer to one and only one small donor committee not more than forty percent (40%) of the amount paid to the organization by each Individual member, with a limit of one hundred dollars (\$100) transferred per Individual member per calendar year.
  - (3) It shall within thirty (30) days of any such transfer notify each paying member of the amount transferred, expressed in dollars or as a percentage of the member's amount paid to the organization. Such notice may be provided by regular mail or electronic mail to each affected member or by posting the information on the organization's main website. If the amount transferred is the same for each member or category of members (in dollars or in percentage of amount paid), the posting may state that amount or percentage without identifying Individual members.
- (n) "Primary Election Period" means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.
- (o) "Prominently Disclose" means that the disclosure shall be readily comprehensible to a person with average reading, vision, and hearing faculties, with:
- (1) any printed disclosure appearing in a type of contrasting color and in the same or larger font size as used for the majority of text in the printed material;

- (2) any video disclosure remaining readable on the regular screen (not closed captioning) for a not less than 4 seconds;
  - (3) any auditory disclosure spoken at a maximum rate of five words per second;
  - (4) any website or email message in type of a contrasting color in the same or larger font size as used for the majority of text in the message;
  - (5) any billboard or sign other than a Small Sign: in type of a contrasting color and not smaller than 10 percent of the height of the billboard or sign.
- (p) "Small Donor Committee" means a Political Committee which has never accepted any Contributions except from Individuals in amounts limited to one hundred dollars (\$100) per Individual contributor per calendar year.
- (q) "Small Sign" means a sign smaller than six (6) square feet.



# Notice of Measure Election

SEL 802

City

26-200

rev 01/18 ORS 250.035, 250.041,  
250.275, 250.285, 254.095, 254.465

<b>Notice</b>		
<b>Date of Notice</b> 8/9/2018	<b>Name of City or Cities</b> City of Portland	<b>Date of Election</b> 11/6/2018

**Final Ballot Title** The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

**Caption** 10 words which reasonably identifies the subject of the measure.

See attached

**Question** 20 words which plainly phrases the chief purpose of the measure.

See attached

**Summary** 175 words which concisely and impartially summarizes the measure and its major effect.

See attached

RECEIVED  
18 AUG -9 AM 11:12  
TIM SCOTT  
DIRECTOR OF ELECTIONS

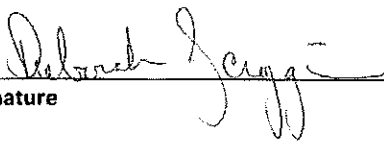
**Explanatory Statement** 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:  
→ any measure referred by the city governing body; or  
→ any initiative or referendum, if required by local ordinance.      **Explanatory Statement Attached?**     Yes     No

**Authorized City Official** Not required to be notarized.

<b>Name</b> Deborah Scroggin	<b>Title</b> City Elections Officer
<b>Mailing Address</b> 1221 SW 4th Ave., Rm 320 Portland OR 97204	<b>Contact Phone</b> 503-823-3546

*By signing this document:*  
→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; and  
→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature:  Date Signed: 8/9/18

## City of Portland – Measure 26-200

### *Proposed by Initiative Petition*

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**Caption:** Amends Charter: Limits candidate contributions, expenditures; campaign communications identify funders.

**Question:** Should Portland Charter limit campaign contributions, expenditures for elected offices; require certain funding disclosures for campaign communications; allow payroll deductions?

**Summary:** Measure amends charter, to be implemented by ordinance effective by September 2019.

Limits contributions received by candidates, candidate committees in city elections per election cycle to:

- No more than \$500 from individual, political committee.
- No more than \$5,000 loan balance from candidate.
- Any amount from small donor committee (defined), which may accept contributions of \$100 or less per individual donor per year.

Allows candidates to receive any amount from government public campaign funding system. Limits independent expenditures to \$5,000 per individual, \$10,000 per political committee, per election cycle. Unlimited independent expenditures by small donor committees.

Each communication (defined) to voters relating to a city candidate election must prominently disclose (defined) information about source of contributions, expenditures for communication.

Allows individuals to make campaign contributions by payroll deduction if private or public employer agrees or allows payroll deductions for other purposes.

Entities making independent expenditures greater than \$750 must register as political committee within three days.

Fines for violations; subpoena power for, investigations by City Auditor.

Definitions; other provisions.

**Caption:**

Amends Charter: Limits candidate contributions, expenditures; campaign communications identify funders. (10)

**Question:**

Should Portland Charter limit campaign contributions, expenditures for elected offices; require certain funding disclosures for campaign communications; allow payroll deductions? (20)

**Summary:**

Measure amends charter, to be implemented by ordinance effective by September 2019.

Limits contributions received by candidates, candidate committees in city elections per election cycle to:

- No more than \$500 from individual, political committee.
- No more than \$5,000 loan balance from candidate.
- Any amount from small donor committee (defined), which may accept contributions of \$100 or less per individual donor per year.

Allows candidates to receive any amount from government public campaign funding system. Limits independent expenditures to \$5,000 per individual, \$10,000 per political committee, per election cycle. Unlimited independent expenditures by small donor committees.

Each communication (defined) to voters relating to a city candidate election must prominently disclose (defined) information about source of contributions, expenditures for communication.

Allows individuals to make campaign contributions by payroll deduction if private or public employer agrees or allows payroll deductions for other purposes.

Entities making independent expenditures greater than \$750 must register as political committee within three days.

Fines for violations; subpoena power for, investigations by City Auditor.

Definitions; other provisions.

(174)

Office of  
AUDITOR OF THE CITY OF PORTLAND

Portland, Oregon 97204

Room 310  
City Hall

STATE OF OREGON }  
County of Multnomah } SS  
City of Portland }

I, Deborah S. Scroggin, do hereby certify that on August 3, 2018, I received the results of the signature verification process completed by the Multnomah County Elections Office for initiative petition PDX 03 with the ballot title caption: "Amends Charter: Limits candidate contributions, expenditures; campaign communications identify funders," submitted by Chief Petitioners B. Elizabeth Trojan and Ronald A. Buel. The petition contains the required 34,156 valid signatures of Portland City voters to qualify for the November 6, 2018 General Election and is hereby certified to the ballot.

IN WITNESS THEREOF, I have hereunto set my hand and the seal of the City of Portland affixed this 6<sup>th</sup> day of August, 2018.

Mary Hull Caballero  
Auditor of the City of Portland



BY: Deborah Scroggin  
Deputy Auditor



Ronald A Buel  
1810 NE 70<sup>th</sup> Ave.  
Portland, OR, 97213

VIA USPS CERTIFIED MAIL, EMAIL

B. Elizabeth Trojan  
12320 SW 60<sup>th</sup> Ave.  
Portland, OR 97219

VIA USPS CERTIFIED MAIL, EMAIL

August 6, 2018

**RE: PDX 03 Qualifies for November Ballot**

Dear Chief Petitioners Buel and Trojan:

On July 6, 2018, the City of Portland received perfected initiative petition PDX 03, titled "Fair Elections /Clean Governance Charter Amendment" purporting to include 55,194 signatures. Following the City and County petition review process governed by Portland City Code and state law, PDX 03 qualifies to the November 6, 2018 General Election ballot.

Tim Scott, Director of Elections for Multnomah County, notified me that the County's statistical sampling and verification process is completed. The sample indicates PDX 03 contains 34,227 valid signatures, exceeding the amount required.

Pursuant to Portland City Code Section 2.04.100 B., PDX 03 will be certified to Multnomah County Elections Division to appear on the City of Portland ballot as a measure proposed by initiative petition.

I appreciate your patience in this process. Please let me know if you have any questions.

Deborah Scroggin  
City Elections Officer



# Notice of Receipt of Ballot Title (02/08/18)

## NOTICE OF RECEIPT OF BALLOT TITLE

Notice is hereby given that a ballot title for an initiative petition has been filed with the Elections Office of the City of Portland on February 8, 2018.

The ballot title is as follows:

### **Caption:**

Amends Charter: Limits candidate contributions, expenditures; campaign communications identify funders.

### **Question:**

Should Portland Charter limit campaign contributions, expenditures for elected offices; require certain funding disclosures for campaign communications; allow payroll deductions?

### **Summary:**

Measure amends charter, to be implemented by ordinance effective by September 2019.

Limits contributions received by candidates, candidate committees in city elections per election cycle to:

- No more than \$500 from individual, political committee.
- No more than \$5,000 loan balance from candidate.
- Any amount from small donor committee (defined), which may accept contributions of \$100 or less per individual donor per year.

Allows candidates to receive any amount from government public campaign funding system. Limits independent expenditures to \$5,000 per individual, \$10,000 per political committee, per election cycle. Unlimited independent expenditures by small donor committees.

Each communication (defined) to voters relating to a city candidate election must prominently disclose (defined) information about source of contributions, expenditures for communication.

Allows individuals to make campaign contributions by payroll deduction if private or public employer agrees or allows payroll deductions for other purposes.

Entities making independent expenditures greater than \$750 must register as political committee within three days.

Fines for violations; subpoena power for, investigations by City Auditor.

Definitions; other provisions.

The City Auditor has determined this measure meets the requirements of Article IV, Section 1(2) (d) and (5) of the Oregon Constitution. An elector may file a petition for review of this ballot title in the Multnomah County Circuit Court no later than 5:00 P.M. on Monday, February 19, 2018.

MARY HULL CABALLERO

Portland City Auditor

Elections Division • Tim Scott, Director

**Memorandum**

Date: August 3, 2018

To: Deborah Scroggin (via email)  
City Elections Officer  
City of Portland  
1221 SW 4<sup>th</sup> Avenue, Room 320  
Portland, OR 97204

From: Tim Scott  
Director of Elections  
Multnomah County  
1040 SE Morrison St.  
Portland, OR 97214

RE: Initiative Petition PDX03 Signature Verification Results

Multnomah County Elections Division completed verification of two statistical samples of signatures submitted for initiative petition PDX03, titled "Fair Elections/Clean Governance Charter Amendment," on August 3, 2018. Based on the statistical formula found in Oregon Administrative Rule 165-014-0110, Appendix 4 (included in the attached Final Tabulation Worksheet), we find that the total number of valid signatures for initiative petition PDX03 is **34,227**.

Attachments:

1. Final Tabulation Worksheet
2. Summary Results of Verification report PM-007
3. Duplicate/Triplicate Signature Recording report PM-002





Petition ID PDX 04

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ROBERT SHORT,  
  
Petitioner,  
  
vs.  
  
MARY HULL CABALLERO, in her official  
capacity as CITY OF PORTLAND  
AUDITOR,  
  
Respondent.

Case no.  
  
**PETITION TO REVIEW  
DETERMINATION OF  
INITIATIVE COMPLIANCE  
WITH CONSTITUTIONAL  
PROVISIONS**  
  
(Appeal of Auditor’s  
Determination Pursuant to  
ORS 250.270(4) and Portland  
City Code 2.04.055(D))  
  
Amount of filing fee pursuant to  
ORS 21.135: \$265.00

COMES NOW, Petitioner Robert Short (“Petitioner”) by and through his attorney,  
Jill Gibson, and respectfully petitions this Court to overturn the determination of Portland  
City Auditor Mary Hull Caballero (“Respondent”) that the prospective initiative petition,  
titled “Portland Clean Energy Community Benefits Initiative 2018” attached as Exhibit 1,  
meets procedural constitutional requirements. Petitioner files this action pursuant to ORS  
250.270(4) and Portland City Code 2.04.055(D), and alleges as follows:

1.

Petitioner is qualified to vote under Article II, section 2, of the Oregon Constitution  
and is a registered voter of the City of Portland.

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2.

Respondent is the City of Portland Auditor and serves as the City Elections Officer. Portland City Code 2.02.020(A). In such capacity, she is responsible for determining whether Portland prospective initiative petitions comply with constitutional requirements contained in Article IV, section 1(2)(d) and section 1(5), of the Oregon Constitution. ORS 250.270; Portland City Code 2.04.055(A).

3.

On or about February 28, 2018, Respondent made a determination that the initiative “meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution.” Exhibit 2.

4.

Petitioner is dissatisfied with the determination that the initiative meets the “full text” requirement of Article IV, section 1(2)(d).

5.

Petitioner files this petition seeking to overturn the determination of Respondent.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for a judgment as follows:

1. Declaring that the prospective initiative petition violates constitutional requirements because it does not contain the full text of the proposed law;
2. Vacating the determination of Respondent, declaring that it is null and void;
3. Requiring Respondent to enter a determination consistent with the Court's findings, and refuse to allow the initiative to be circulated;
4. Awarding Petitioner his costs and disbursements incurred herein; and

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5. Awarding Petitioner any other such relief as justice and equity may require.

DATED March 14, 2018

By: /s/ Jill Gibson  
Jill Gibson, OSB #973581  
jill@gibsonlawfirm.org  
Attorneys for Petitioner

**The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses).**

**Section 1 – Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City’s Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City’s overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

**Section 2 – Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland’s Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.

2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Clean Energy Community Benefits Fund." The money in this fund will be used to finance programs that meet the following priorities:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a "Portland Clean Energy Community Benefits Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### **Section 3. Definitions**

Unless otherwise defined in this section, terms that are defined in Portland's Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. "Bank" has the same meaning as used in ORS § 706.008(1).
2. "City" means the City of Portland.
3. "Clean renewable energy" means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.
5. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as "regenerative agriculture."
7. "Green infrastructure" means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. "Large retailer" means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term "Large Retailer" does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;

- iii. any cooperative recognized under state or federal law; or
  - iv. a federal or state credit union.
9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
  10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
  11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
  12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
  13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
  14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Large Retailers shall pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and



- d. Retail sales of qualified health care services.
3. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 7.02.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, those revenues shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

#### **Section 6. Portland Clean Energy Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the "Portland Clean Energy Community Benefits Fund" ("Fund").
2. Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.

- b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
- 3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
- 4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
- 5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

**Section 7. The Portland Clean Energy Community Benefits Fund Committee**

- 1. There shall be established a “Portland Clean Energy Community Benefits Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
- 2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
- 3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
- 4. The Mayor shall appoint members of the Committee based on the following background and expertise:

- a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82<sup>nd</sup> Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:
- a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the

City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.

- f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

### **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.

- iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Clean energy jobs training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
- 2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82<sup>nd</sup> Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
  - c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in

partnership with other non-profit entities, government entities or for-profit businesses.

- d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

### **Section 9. Amendment to Portland City Code PCC 7.02.600(G)**

Portland City Code 7.02.600 (Income Determinations) is amended to read as follows (*italicized and bolded language is new*):

"A. Owners Compensation Deductions. "Owners Compensation Deduction" is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division's discretion.

- 1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

B. Sole Proprietorships. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

C. Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

D. Corporations. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

E. Estates and Trusts. In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

F. Non-business Income. In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.

G. Taxes Based on or Measured by Net Income. In determining income, no deduction is allowed for taxes based on or measured by net income *or for the surcharge imposed by this measure*. No deduction is allowed for the federal built-in gains tax.

H. Ordinary Gain or Loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

I. Net Operating Loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.
2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period."

#### **Section 10. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.





Sign In

+Aa -Aa ↺Aa



Auditor Mary Hull Caballero

Promoting open and accountable government



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## November 6, 2018 General Election Initiative Petition Log

### INITIATIVES INTENDED FOR NOVEMBER 6th, 2018 GENERAL ELECTION

- Deadline to submit signature sheets - 5:00 p.m. July 6, 2018
- Required signatures of active registered City of Portland voters to qualify to the ballot – 34,156

#### Petition ID PDX 01

Prospective Petition Filed: 12/20/2017

#### Chief Petitioners (contact information):

Ronald A. Buel  
1810 NE 70th Ave.  
Portland OR 97213  
Ron@donavoncards.com

B. Elizabeth Trojan  
12320 SW 60th  
Portland, OR 97219  
elizat8@pobox.com

#### Petition Documents:

[Text of Proposed Charter Change \(via chief petitioners\)](#)

[Withdrawal of Petition From SEL 375](#)

#### Title of Prospective Initiative Petition

Fair Elections/Clean Governance Charter Amendment

#### Status:

12/20/17 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited constitutional review to be completed by 12/28/17.

12/28/17 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon

Constitution. Petition copy to be sent to City Attorney on 12/29/17 to draft a ballot title.

12/29/17 - Ballot title request for prospective initiative petition PDX 01 sent to City Attorney per ORS 250.275. Ballot title due to City Auditor's Office by 1/8/17.

01/05/18 - Chief petitioners submit [SEL 375 Withdrawal](#) of Petition for prospective petition ID PDX01. Petition void.

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## Petition ID PDX 02

Prospective Petition Filed: 1/18/2018

### Chief Petitioner & Authorized Agents (contact information):

Adriana Voss-Andreae (chief petitioner)  
1517 SE Holly St.  
Portland OR 97214  
vossandreae@gmail.com

Elbert Mondaine (chief petitioner)  
9115 N. Portsmouth  
Portland, OR 97203  
edmondaine@ctoregon.org

Lenny Dee (authorized agent)  
lenny@onwardoregon.org

Paige Richardson (authorized agent)  
paiger13@gmail.com

### Petition Documents:

[Text of Proposed City Code](#) (via chief petitioner)

[Ballot Title](#) (via City Attorney)

[Ballot Title Challenge](#) (via Challenger Pat McCormick)

[Constitutional Determination Challenge](#) (via Challenger Pat McCormick)

### Title of Initiative Petition:

Portland Climate Action Community Benefits Initiative 2018

### Status:

1/18/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited constitutional review to be completed by 1/25/18.

1/25/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney on 1/26/18 to request ballot title.

1/26/18 - Request for ballot title for prospective initiative petition PDX 02 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 2/2/18.

2/2/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 02. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends February 13, 2018. Notification available [here](#).

2/14/18 - City Auditor receives [ballot title challenge](#) and [Constitutional determination](#) appeal from Portland elector. Petitions for reviews for both items to be scheduled by Multnomah County Circuit Court for a hearing.

2/21/18 - Multnomah County Circuit Court hearing scheduled for 3/23/18. Court will hear oral arguments for both Constitutional and ballot title challenges.

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### **Petition ID PDX 03**

Prospective Petition Filed: 1/24/2018

#### **Chief Petitioners and Authorized Agents (contact information):**

Ronald A. Buel (chief petitioner)  
1810 NE 70th Ave.  
Portland OR 97213  
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B. Elizabeth Trojan (chief petitioner)  
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Portland, OR 97219  
elizat8@pobox.com

Dan Meek (authorized agent)  
dan@meek.net

David Delk (authorized agent)  
Davidafd@ymail.com

#### **Petition Documents:**

[Text of Proposed Charter Change \(via chief petitioners\)](#)

[Ballot Title \(prepared by City Attorney\)](#)

#### **Title of Petition:**

Fair Elections/Clean Governance Charter Amendment

#### **Status:**

1/24/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited Constitutional review to be completed by 1/31/18.

1/31/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney for request of ballot title on 2/1/18.

2/1/18 - Request for ballot title for prospective initiative petition PDX 03 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 2/8/18.

2/8/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 03. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends February 20, 2018. Notification available [here](#).

2/21/18 - No challenges to ballot title received by City for PDX 03. Cover and signature sheets may be submitted for approval to circulate.

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## Petition ID PDX 04

Prospective Petition Filed: 2/21/2018

### Chief Petitioner & Authorized Agents (contact information):

Adriana Voss-Andreae (chief petitioner)  
1517 SE Holly St.  
Portland OR 97214  
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Elbert Mondaine (chief petitioner)  
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Portland, OR 97203  
edmondaine@ctoregon.org

Lenny Dee (authorized agent)  
lenny@onwardoregon.org

Paige Richardson (authorized agent)  
paiger13@gmail.com

### Petition Documents:

[Text of Proposed City Code](#) (via chief petitioner)

[Ballot Title](#) (via City Attorney)

### Title of Initiative Petition:

Portland Clean Energy Community Benefits Initiative 2018

### Status:

2/21/18 - Prospective initiative petition filed: Auditor determining if meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Limited Constitutional review to be completed by 2/28/18.

2/28/18 - Prospective initiative petition meets requirements of Section 1(2)(d) and (5), Article IV of the Oregon Constitution. Petition copy to be sent to City Attorney for request of ballot title on 3/1/18.

3/1/18 - Request for ballot title for prospective initiative petition PDX 04 sent to City Attorney per ORS 270.275. Ballot title due to Auditor's Office by 3/8/18.

3/5/18 - City Attorney files [ballot title](#) with City Elections Office for PDX 04. Ballot title challenge period begins; any elector may petition for review of the title in Multnomah County Circuit Court. Review period ends Wednesday, March 14, 2018. Notification available [here](#).

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ROBERT SHORT,  
  
Petitioner,  
  
vs.  
  
TRACY REEVE, in her official capacity as  
PORTLAND CITY ATTORNEY,  
  
Respondent.

Case no.  
  
**PETITION TO SEEK  
ALTERNATIVE BALLOT  
TITLE**  
  
(Appeal of City Attorney’s  
Ballot Title Pursuant to  
ORS 250.296(1) and  
Portland City Code 2.04.070)  
  
Amount of filing fee pursuant to  
ORS 21.135: \$265.00

COMES NOW, Petitioner Robert Short (“Petitioner”) by and through his attorney,  
Jill Gibson, and respectfully petitions this Court to reject the ballot title prepared by City  
Attorney Tracy Reeve (“Respondent”) for the prospective initiative petition, titled “Portland  
Clean Energy Community Benefits Initiative 2018” (“the Initiative”). Petitioner files this  
action pursuant to ORS 250.296(1) and Portland City Code 2.04.070, and alleges as follows:

1.

Petitioner is qualified to vote under Article II, section 2, of the Oregon Constitution  
and is a registered voter of the City of Portland.

2.

Respondent Tracy Reeve is the Portland City Attorney and in such capacity is  
charged with preparing city initiative petition ballot titles pursuant to ORS 250.275(3)(a) and

1 Portland City Code 2.04.060(A). The Office of the City Attorney has offices located in  
2 Portland, Oregon.

3 3.

4 On or about February 21, 2018, the Initiative was filed with the city elections officer.  
5 A true and accurate copy of the Initiative is attached as Exhibit 1 and incorporated herein.

6 4.

7 On or about March 5, 2018, Respondent prepared a ballot title and filed the same with  
8 the city elections officer. A true and accurate copy of the ballot title is attached as Exhibit 2  
9 and incorporated herein.

10 5.

11 Petitioner is dissatisfied with the ballot title prepared by Respondent. Petitioner  
12 alleges that the ballot title prepared by Respondent is insufficient, not concise, and unfair for  
13 the following reasons:

- 14 a. The caption does not reasonably identify the subject of the Initiative as required  
15 by ORS 250.035(1)(a) and Portland City Code 2.04.060(B)(1).
- 16 i. The caption fails to inform voters that the Initiative would raise  
17 and replace existing taxes.
  - 18 ii. The caption is misleading by calling the proposed tax a  
19 “surcharge” because the Initiative would impose a new and  
20 different tax based on sales.
  - 21 iii. The caption fails to state that the Initiative would fund nonprofit  
22 corporations.
  - 23 iv. The caption fails to inform voters that “clean energy” is defined  
24 by the Initiative.
- 25 b. The question does not plainly state or phrase the chief purpose of the Initiative as  
26 required by ORS 250.035(1)(b) and Portland City Code 2.04.060(B)(2).

- 1 i. In addition to the above problems, the question fails to inform  
2 voters that “clean renewable energy” is defined by the Initiative.
- 3 c. The summary does not concisely and impartially summarize the measure and its  
4 major effect as required by ORS 250.035(1)(c) and Portland City Code  
5 2.04.060(B)(3).
- 6 i. In addition to the above problems, the summary improperly  
7 conflates the percentage of funding allocated to different programs.
- 8 ii. The summary improperly refers to “Job Training” as “Clean  
9 Energy Job Training.”
- 10 iii. The summary fails to inform voters that the Initiative would  
11 redirect gas tax revenue to goals of Initiative.
- 12 iv. The summary fails to inform voters that the Initiative would create  
13 a committee of unelected individuals that has significant power  
14 and control over funding decisions.
- 15 v. The summary fails to include any information regarding  
16 exemptions, penalties, enforcement, and effective date.

17 6.

18 In lieu of the ballot title filed by Respondent, Petitioner respectfully requests that this  
19 Court certify a ballot title that Petitioner will suggest in further filings or another that the  
20 Court shall design.

21 **WHEREFORE**, Petitioner prays for relief as follows:

- 22 1. Declare Respondent’s ballot title does not conform to the requirements of  
23 state and city law;
- 24 2. Declare Respondent’s ballot title to be invalid;
- 25 3. Certify to the City Auditor Petitioner's suggested ballot title or another  
26 compliant ballot title;



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- 4. Award Petitioner his costs and disbursements incurred herein; and
- 5. Award such other different or ancillary relief as the Court deems just and equitable.

DATED March 14, 2018

By: /s/ Jill Gibson  
Jill Gibson, OSB #973581  
jill@gibsonlawfirm.org  
Attorneys for Petitioner

**The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses).**

**Section 1 – Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City’s Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City’s overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

**Section 2 – Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland’s Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.

2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Clean Energy Community Benefits Fund." The money in this fund will be used to finance programs that meet the following priorities:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a "Portland Clean Energy Community Benefits Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### **Section 3. Definitions**

Unless otherwise defined in this section, terms that are defined in Portland's Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. "Bank" has the same meaning as used in ORS § 706.008(1).
2. "City" means the City of Portland.
3. "Clean renewable energy" means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.
5. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as "regenerative agriculture."
7. "Green infrastructure" means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. "Large retailer" means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term "Large Retailer" does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;

- iii. any cooperative recognized under state or federal law; or
  - iv. a federal or state credit union.
9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
  10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
  11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
  12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
  13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
  14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Large Retailers shall pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and

- d. Retail sales of qualified health care services.
3. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 7.02.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, those revenues shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

#### **Section 6. Portland Clean Energy Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the "Portland Clean Energy Community Benefits Fund" ("Fund").
2. Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.

- b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
- 3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
- 4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
- 5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

**Section 7. The Portland Clean Energy Community Benefits Fund Committee**

- 1. There shall be established a “Portland Clean Energy Community Benefits Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
- 2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
- 3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
- 4. The Mayor shall appoint members of the Committee based on the following background and expertise:

- a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82<sup>nd</sup> Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:
- a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the



City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.

- f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

### **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.

- iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Clean energy jobs training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
- 2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82<sup>nd</sup> Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
  - c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in

partnership with other non-profit entities, government entities or for-profit businesses.

- d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

### **Section 9. Amendment to Portland City Code PCC 7.02.600(G)**

Portland City Code 7.02.600 (Income Determinations) is amended to read as follows (*italicized and bolded language is new*):

"A. Owners Compensation Deductions. "Owners Compensation Deduction" is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division's discretion.

- 1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

B. Sole Proprietorships. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

C. Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

D. Corporations. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

E. Estates and Trusts. In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

F. Non-business Income. In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.

G. Taxes Based on or Measured by Net Income. In determining income, no deduction is allowed for taxes based on or measured by net income *or for the surcharge imposed by this measure*. No deduction is allowed for the federal built-in gains tax.

H. Ordinary Gain or Loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

I. Net Operating Loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.
2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period."

#### **Section 10. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

# Portland Clean Energy Community Benefits Initiative 2018

MAR 19 03:20 PM

AUDITOR

## CAPTION

Imposes surcharge on certain retailers; funds clean energy, job training. (10)

## QUESTION

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs? (20)

## SUMMARY

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species
- Heating, lighting, water and cooling efficiencies
- Green building design
- Urban tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for disadvantaged workers, such as:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions. (175)

# Notice of Measure Election

City

26-201

SEL 802

rev 01/18 ORS 250.035, 250.041, 250.275, 250.285, 254.095, 254.465

<b>Notice</b>		
<b>Date of Notice</b> 08/29/2018	<b>Name of City or Cities</b> City of Portland	<b>Date of Election</b> 11/06/2018

**Final Ballot Title** The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

**Caption** 10 words which reasonably identifies the subject of the measure.  
See attached

**Question** 20 words which plainly phrases the chief purpose of the measure.  
See attached

**Summary** 175 words which concisely and impartially summarizes the measure and its major effect.  
See attached

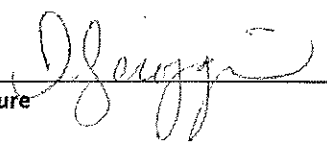
RECEIVED  
 18 AUG 29 AM 11:22  
 TIM SCOTT  
 DIRECTOR OF ELECTIONS

**Explanatory Statement** 500 words that impartially explains the measure and its effect.  
 If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:  
 → any measure referred by the city governing body; or  
 → any initiative or referendum, if required by local ordinance.  
**Explanatory Statement Attached?**  Yes  No

**Authorized City Official** Not required to be notarized.

<b>Name</b> Deborah Scroggin	<b>Title</b> City Elections Officer
<b>Mailing Address</b> 1221 SW 4th Ave. Portland OR 97204 Rm 320	<b>Contact Phone</b> 503-823-3546

*By signing this document:*  
 → I hereby state that I am authorized by the city to submit this Notice of Measure Election; and  
 → I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature 

8/29/18  
Date Signed

## **PORTLAND CLEAN ENERGY COMMUNITY BENEFITS INITIATIVE 2018**

### **CAPTION**

Imposes surcharge on certain retailers; funds clean energy, job training.

### **QUESTION**

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy (defined) projects, job training?

### **SUMMARY**

Measure amends code to require Portland retailers with total annual revenue over 1 billion dollars and Portland annual revenue over 500,000 dollars to pay 1% surcharge on gross revenue from retail sales (defined) within Portland. Proceeds placed into new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicines, health care services excluded from gross revenue.

Measure creates new Portland Clean Energy Community Benefits Fund Committee; will exclusively recommend to Mayor distributions of Fund proceeds as grants to private, Oregon nonprofit organizations, for:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power, or certain hydropower
- Heating, lighting, water, cooling efficiencies
- Green building design
- Tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for traditionally underemployed, economically disadvantaged workers, including:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Annual financial audit; biennial performance audit.

Administrative costs cannot exceed 5%.

Other provisions.



Office of  
AUDITOR OF THE CITY OF PORTLAND

Portland, Oregon 97204

Room 310  
City Hall

STATE OF OREGON }  
County of Multnomah } SS  
City of Portland }

I, Deborah S. Scroggin, do hereby certify that on July 27, 2018, I received the results of the signature verification process completed by the Multnomah County Elections Office for initiative petition PDX 04 with the ballot title caption: "Imposes surcharge on certain retailers; funds clean energy, job training," submitted by Chief Petitioners Adriana Voss-Andreae and Elbert Mondaine. The petition contains the required 34,156 valid signatures of Portland City voters to qualify for the November 6, 2018 General Election and is hereby certified for Council action.

IN WITNESS THEREOF, I have hereunto set my hand and the seal of the City of Portland affixed this 27<sup>th</sup> day of July, 2018.

Mary Hull Caballero  
Auditor of the City of Portland



BY: Deborah Scroggin  
Deputy Auditor



JUL 27 03:29 PM  
RUCY/DK

## Department of Community Services

Elections Division • Tim Scott, Director

### Memorandum

Date: July 27, 2018

To: Deborah Scroggin (via email)  
City Elections Officer  
City of Portland  
1221 SW 4<sup>th</sup> Avenue, Room 320  
Portland, OR 97204

From: Tim Scott  
Director of Elections  
Multnomah County  
1040 SE Morrison St.  
Portland, OR 97214

RE: Initiative Petition PDX04 Signature Verification Results

Multnomah County Elections Division completed verification of a statistical sample of signatures submitted for initiative petition PDX04, titled "Portland Clean Energy Community Benefits Initiative 2018," on July 27, 2018. Based on the statistical formula found in Oregon Administrative Rule 165-014-0110, Appendix 4 (included in the attached Final Tabulation Worksheet), we find that the total number of valid signatures for initiative petition PDX04 is **39,755**.

#### Attachments:

1. Final Tabulation Worksheet
2. Summary Results of Verification report PM-007
3. Duplicate/Triplicate Signature Recording report PM-002



IN THE CIRCUIT COURT OF THE STATE OF OREGON

APR 30 19 04:14 PM  
AUDITOR

FOR MULTNOMAH COUNTY

ROBERT SHORT,

Petitioner,

v.

MARY HULL CABALLERO, in her  
official capacity as CITY OF PORTLAND  
AUDITOR,

Respondent.

and

ADRIANA VOSS-ANDREA, ELBERT  
MONDAINE AND PAIGE  
RICHARDSON,

Intervenors.

Case No. 18CV10103

OPINION AND ORDER

**INTRODUCTION**

This case came on for hearing on April 20, 2018 on Petitioner’s Petition to Review Determination of Compliance with Constitutional Provisions (hereafter, “Petition”). Petitioner Robert Short appeared by and through his counsel, Jill Gibson. Respondent Mary Caballero, in her official capacity as the City of Portland Auditor, appeared by and through Deputy City Attorney Maja Haium. Intervenors Adriana Voss-Andrea, Elbert Mondaine, and Paige Richardson appeared by and through their counsel, Margaret Olney.

Petitioner challenges Respondent’s determination that an initiative entitled “Portland Clean Energy Community Benefits Initiative 2018” (hereafter, “PDX 04”) meets the

requirements of Article IV, section 1(2)(d) of the Oregon Constitution. Petitioner argues that because PDX 04 does not satisfy this constitutional mandate, the Court should overturn Respondent's determination, which would preclude PDX 04 from being circulated for signatures in support of qualification for the ballot.

Respondent and Intervenors argue that PDX 04 complies with the relevant constitutional provision.

For the reasons explained in this Opinion, the Court finds that the conceded flaw in PDX 04's enacting clause is not of constitutional dimension, and that Respondent's determination that PDX 04 meets the dictates of Article IV, section 1(2)(d) of the Oregon Constitution is correct. The Court therefore denies the Petition.

#### **PROCEDURAL HISTORY**

The Portland City Code ("PCC") required Respondent, as City of Portland Auditor, to determine whether PDX 04 complied with Article IV, section 1(2)(d) of the Oregon Constitution. Respondent determined that PDX 04 does, in fact, comply with the relevant constitutional provisions. Petitioner timely filed the instant challenge to that determination.

On March 23, 2018, the Court entered a stipulated order allowing intervention in this action by Adriana Voss-Andrea, Elbert Mondaine, and Paige Richardson.

#### **DISCUSSION, ANALYSIS & CONCLUSIONS**

Petitioner is plainly correct in his assertion that an error in PDX 04's enacting clause renders the clause inaccurate and leaves voters with incomplete information. With respect to the error: PDX 04's enacting clause states that if PDX 04 is approved by the voters, it will "enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses)." Respondent concedes that the PCC does not contain a "Chapter 7." It

contains a Title 7, and there are sequentially numbered Chapters within that Title, beginning with Chapter 7.02. The enacting clause, then, states nonsensically that PDX 04 will be added to a nonexistent part of the PCC. The question for decision is whether this mistake brings PDX 04 out of compliance with the Oregon Constitution.

ORS 257.270(4) provides that an elector may petition a Circuit Court to “overturn the determination of the City election’s officer” that a prospective petition for an initiative measure “meets the requirements of section 1(2)(d) and (5), Article IV of the Oregon Constitution.”<sup>1</sup> In this case, Petitioner argues that the PDX 04 fails to satisfy the requirements of Article IV, section 1(2)(d) of the Oregon Constitution, which requires that an initiative “include the full text of a proposed law or amendment to the Constitution.”

The scope of this “full text” requirement has been defined most fulsomely in *Kerr v. Bradbury*, 193 Or. App. 304, 89 P.3d 1227 (2004). In *Kerr*, the Court of Appeals stated that Article IV, section 1(2)(d) means what its plain language suggests: voters presented with a ballot measure must be provided with the “full text of the statute as it would appear if amended.” 193 Or. App. at 325; 89 P.3d at 1238.

Petitioner’s argument is founded on the view that because PDX 04’s enacting clause does not define where in the PCC the ordinance would be placed upon passage (because it states that the ordinance will be placed in a nonexistent part of the PCC), PDX 04 fails to comply with the “full text” requirement. Petitioner reasons that if PDX 04 passes, the new ordinance will have to be placed somewhere in the PCC. He reasons further that the “full text” requirement mandates that PDX 04 must therefore include the as-yet-undetermined PCC statute that will serve as PDX

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<sup>1</sup> The Court is also mindful of ORS 250.270, which provides that “[t]he review by the circuit court shall be the first and final review, and shall be conducted expeditiously to ensure the orderly and timely circulation of the petition.”

Respondent's argument is without persuasive value; it ignores both the reality of the full text requirement, and its purpose. Pursuant to the Oregon Constitution, registered voters are entitled to see the "full text of the statute as it would appear if amended." *Kerr*, 193 Or. App. at 325; 89 P.3d at 1238. It is the City of Portland Auditor's responsibility (as Portland's elections officer) to provide the voters with this information. The City of Portland Auditor cannot evade this responsibility by presenting registered voters (intentionally or by mistake) with a proposed measure that simply delegates the task of placing the statute wherever the City of Portland Auditor thinks is most appropriate.

Respondent's second argument in opposition to the Petition urges that notwithstanding the conceded mistake in the enacting clause, PDX 04 does comply with the "full text" requirement. Respondent argues that PDX 04 is – with the exception of an eight-word proposed amendment to PCC 7.02.600(G) – a stand-alone ordinance. It therefore – with the exception of that exception – does not "amend" any other statute that would need to be included pursuant to the "full text" statute. In other words, Respondent's position is that the "full text of the statute as it would appear if amended" is the text of PDX 04 itself.

The Court finds Respondent's argument on this point persuasive. PDX 04 on its face would enact a stand-alone provision of the PCC. It does not purport to amend any other statutory text in the PCC; if passed, it would plainly be an entirely new addition to the PCC that would not change the language or the meaning of any other portion of the PCC. Thus, the "full text of the statute as it would appear if amended" is found in the measure itself. Registered voters will have a full understanding of what PDX will do from reading the proposed measure itself. Both the full text requirement of Article IV, section 1(2)(d) and its underlying purpose are therefore satisfied.

04's landing spot. Petitioner posits that because PDX 04 does not include the full text of that (unknown) statute, PDX 04 fails to satisfy the "full text" requirement.

Petitioner's position carries logical force. The purpose of Oregon's constitutional "full text" requirement is to permit registered voters to have a full understanding of the proposed measure being circulated for signatures. Without the context of the present state of the law and/or how that law would be modified by passage of a ballot measure, registered voters could not fully understand the potential impact(s) of a proposed ballot measure. That is, the full text requirement is intended to "provide sufficient information so that the registered voters can intelligently evaluate whether to sign the initiative petition." *Kerr*, 193 Or. App. At 320; 89 P.3d at 1227 (quoting with approval *Mervyn's v. Reyes*, 69 Cal.App.4<sup>th</sup> 93, 81 Cal.Rptr.2 148, 151 (1998)). It would frustrate the very purpose of the "full text" requirement if sponsors of proposed measures or city elections officials could – by design or through honest mistake – avoid this requirement by causing or permitting an enacting clause to reference a non-existent statute.

Respondent's<sup>2</sup> first argument in opposition to the Petition relies on PCC 1.01.035(B), which authorizes the City Auditor to – among other things – "rearrange, number \* \* \* and divide provisions of the City Code, and to correct clerical errors \* \* \* in accordance with the meaning and intent of the provisions of the Code." Respondent reasons that because the City Auditor enjoys the authority to "rearrange" provisions of the City Code, the "effect of [PDX 04's] imprecision is merely to provide discretion to the City Auditor, subject to approval of the City Attorney, to determine where in Title 7 (Business Licenses) the city will codify [PDX 04] if it is approved by voters. (City's Response at 3).

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<sup>2</sup> Intervenors' arguments in response to the Petition largely track Respondent's arguments. For the sake of brevity, the Court will incorporate its analysis of Intervenors' arguments into its discussion of Respondent's positions.

Petitioner argues that this conclusion is incompatible with *Kerr*, and notes that the proposed initiative petition in *Kerr* also involved “new” statutory provisions that did not change the words of the existing statutes which they sought to amend. (Petitioner’s Reply at 3). The Court agrees with Petitioner’s description of *Kerr*, but disagrees with Petitioner’s conclusion.

Unlike the PDX 04, the proposed statutory amendments presented by the initiative petition in *Kerr* would have changed the meaning of the already existing statutes which they sought to amend, even though they did not seek to change any of the extant words of those statutes. In particular, the new language would have: (1) amended an existing statute that required that schools provide special emphasis in instructing certain values (including “honesty” and “respect for all humans, regardless of \* \* \* sex”) to add a provision that precluded the teaching of “sexual orientation”; and (2) added new sanctions for any school found to have violated the proposed preclusion. *Kerr*, 193 Or. App. At 6; 89 P.3d at 1229.

The effect of the proposed statutory amendments in *Kerr*, then, was to change the meaning (or at the very least limit the potentially available meanings) of a statute that was being truly amended. For example, schools may have understood the extant requirement that they emphasize “respect for all humans” included teaching “respect for humans of all sexual orientations”; the proposed initiative measure, if passed, would have eliminated that meaning from the existing statutory language (without changing that existing language itself). The proposed initiative measure in *Kerr* thus sought to change the underlying statutes, and the Oregon Constitution required that those to-be-amended statutes be presented to registered voters in full.

The circumstances in *Kerr* are very different from those presented here. PDX 04’s proposed new ordinance does not affect the text or the meaning of any PCC ordinance already in



existence. Unlike the proposed statutory amendments in *Kerr*, PDX 04 does not alter or amend either the text or the meaning of any existing statute. It proposes a true “stand-alone” statute that would not effect a substantive “amendment” of any other provision of the PCC. Thus Article IV, section 1(2)(d)’s requirement that the “full text of the statute as it would appear if amended” is satisfied by the text of PDX 04 itself.

As noted above, there is an exception to PDX 04’s self-contained nature: Respondent concedes that PDX 04 does include an eight-word amendment to PCC 7.02.600(G). PDX 04 includes the entirety of PCC 7.02.600 (including paragraph (G)) as it would appear if PDX 04 was approved by the voters. The inclusion of the full text of this statute, in combination with the fact that PDX 04 is otherwise self-contained and would not alter the text or meaning of any other portion of the PCC, means that the “full text of the statute as it would appear if amended” is presented by PDX 04 itself. The enacting clause error does not render things otherwise.

### CONCLUSION

For the reasons stated above, the Petition is DENIED. Respondent will prepare an appropriate form of judgment.

Dated this 30<sup>th</sup> day of April, 2018.

A handwritten signature in black ink, appearing to read 'B. Souede', written over a horizontal line.

Benjamin Souede  
Circuit Court Judge



# Portland Clean Energy Community Benefits Initiative 2018

MAR 18 03:20 PM

AUDITOR

## CAPTION

Imposes surcharge on certain retailers; funds clean energy, job training. (10)

## QUESTION

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs? (20)

## SUMMARY

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species
- Heating, lighting, water and cooling efficiencies
- Green building design
- Urban tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for disadvantaged workers, such as:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

## **Future Innovation (approximately 5%)**

Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions. (175)

# Portland Clean Energy Community Benefits Initiative 2018

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Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions. (175)

**The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses).**

**Section 1 – Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City’s Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City’s overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

**Section 2 – Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland’s Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.

2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the “Portland Clean Energy Community Benefits Fund.” The money in this fund will be used to finance programs that meet the following priorities:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a “Portland Clean Energy Community Benefits Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### **Section 3. Definitions**

Unless otherwise defined in this section, terms that are defined in Portland’s Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. “Bank” has the same meaning as used in ORS § 706.008(1).
2. “City” means the City of Portland.
3. “Clean renewable energy” means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.
5. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as "regenerative agriculture."
7. "Green infrastructure" means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. "Large retailer" means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term "Large Retailer" does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;

- iii. any cooperative recognized under state or federal law; or
  - iv. a federal or state credit union.
9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
  10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
  11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
  12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
  13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
  14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Large Retailers shall pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and



- d. Retail sales of qualified health care services.
3. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 7.02.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, those revenues shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

#### **Section 6. Portland Clean Energy Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the "Portland Clean Energy Community Benefits Fund" ("Fund").
2. Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.

- b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
- 3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
- 4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
- 5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

### **Section 7. The Portland Clean Energy Community Benefits Fund Committee**

- 1. There shall be established a “Portland Clean Energy Community Benefits Fund Committee (“Committee”) made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
- 2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
- 3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
- 4. The Mayor shall appoint members of the Committee based on the following background and expertise:

- a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82<sup>nd</sup> Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:
- a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the

City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.

- f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

### **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.

- iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Clean energy jobs training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
- 2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82<sup>nd</sup> Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
  - c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in

partnership with other non-profit entities, government entities or for-profit businesses.

- d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

### **Section 9. Amendment to Portland City Code PCC 7.02.600(G)**

Portland City Code 7.02.600 (Income Determinations) is amended to read as follows (*italicized and bolded language is new*):

"A. Owners Compensation Deductions. "Owners Compensation Deduction" is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division's discretion.

- 1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

B. Sole Proprietorships. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

C. Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

D. Corporations. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

E. Estates and Trusts. In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

F. Non-business Income. In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.

G. Taxes Based on or Measured by Net Income. In determining income, no deduction is allowed for taxes based on or measured by net income *or for the surcharge imposed by this measure*. No deduction is allowed for the federal built-in gains tax.

H. Ordinary Gain or Loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

I. Net Operating Loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.
2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period."

#### **Section 10. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.



March 15, 2018

**VIA MESSENGR**

Mary Hull Caballero, Auditor  
City of Portland  
1221 SW 4<sup>th</sup> Ave  
Portland, OR 97204

Re: Petition for Different Ballot Title – Pat McCormick v. Tracy Reeve, City Attorney,  
Multnomah County Circuit Court

Dear Mary:

Enclosed is a copy of Petition for Different Ballot Title – *Pat McCormick v. Tracy Reeve, City Attorney* regarding PDX 04.

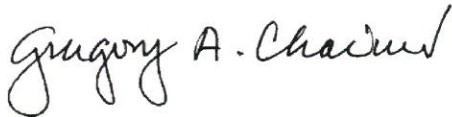
We are providing the Petition under ORS 250.296(2).

We filed this Petition yesterday with the Multnomah County Circuit Court.

Please let us know if you have any questions or need additional information.

Very truly yours,

Davis Wright Tremaine LLP



Gregory A. Chaimov

GAC/jan

Enclosure

cc: Maja Haium  
Margaret Olney

4852-4946-8255v.1 0083084-000005

1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 PAT MCCORMICK,  
7  
8  
9 TRACY REEVE, City Attorney,  
10  
11

Petitioner,  
  
v.  
  
Respondent.

Case No. 18CV09962

**PETITION FOR DIFFERENT  
BALLOT TITLE**

11 Petitioner alleges:

12 1.

13 Petitioner is an elector of the City of Portland.

14 2.

15 Respondent is the City Attorney for the City of Portland.

16 3.

17 On or about February 21, 2018, Chief Petitioners filed prospective petition PDX 04  
18 (“Petition PDX 04”). A true and accurate copy of the Petition is attached as Exhibit 1.

19 4.

20 On or about March 5, 2018, Respondent filed the ballot title for Petition PDX 04 with the  
21 City of Portland elections officer. A true and accurate copy of ballot title is attached as Exhibit

22 2.

23 5.

24 Petitioner is dissatisfied with the ballot. The ballot title is insufficient, not concise, or  
25 unfair for the following reasons:

26 a. The caption does not reasonably identify the subject of the measure as required by

1 ORS 250.035(1)(a) for the following reasons:

2 (1) The caption is inaccurate, vague, and misleading by using the term  
3 “surcharge” to describe the tax the measure imposes. The tax the measure imposes is not a  
4 surcharge as the term is commonly understood. The use of surcharge may also confuse and  
5 mislead voters because the term in the measure conveys a meaning different than when used in  
6 the current code. If the title uses the term “surcharge,” the title should alert voters that the term  
7 is undefined.

8 (2) The subject of the measure is not a “surcharge on certain retailers” but an  
9 increase in the business license tax for certain businesses, measured by revenues from certain  
10 retail sales. The tax is also on sales, not on certain retailers, the payers of the tax. The  
11 inaccuracy of the caption can be seen in comparison with the question, with which the caption is  
12 grammatically and substantively inconsistent.

13 (3) The caption is incomplete and misleading by failing to describe the nature  
14 of the tax on which the measure imposes the surcharge—revenues from sales—when there are  
15 many possibilities for the basis for the tax that the caption as drafted covers, such as on the value  
16 of property.

17 (4) The caption is too specific, and, therefore, under-inclusive, by describing  
18 only some of the activities the measure could fund; the caption should refer to the entire set of  
19 activities through a more encompassing term.

20 (5) The caption improperly favors passage of the measure by selecting uses of  
21 the tax most likely to appeal to voters.

22 b. The question does not plainly phrase the chief purpose of the measure as required  
23 by ORS 250.035(1)(b) for the following reasons:

24 (1) The question is inaccurate, vague, and misleading by using the term  
25 “surcharge” to describe the tax the measure imposes. The tax the measure imposes is not a  
26 surcharge as the term is commonly understood. The use of “surcharge” may also confuse and

1 mislead voters because the term in the measure conveys a meaning different than when used in  
2 the current code. If the title uses the term “surcharge,” the title should alert voters that the term  
3 is undefined.

4 (2) The question is too specific, and, therefore, under-inclusive, by describing  
5 only some of the activities the measure could fund; the caption should refer to the entire set of  
6 activities through a more encompassing term.

7 (3) The question is misleading by describing uses of the tax revenues with  
8 labels that do not accurately describe the uses.

9 (4) The question improperly favors passage of the measure by selecting uses  
10 of the tax most likely to appeal to voters.

11 (5) The question fails to alert voters that key terms that affect the scope of the  
12 measure are undefined, including the “consumer” who is an essential part of a sale to which the  
13 measure applies.

14 (6) The question omits information essential to voters’ understanding of the  
15 measure by failing to define or explain the scope, nature, or source of the “Portland revenues”  
16 that are subject to the surcharge.

17 (7) The question omits information essential to voters’ understanding of the  
18 measure by failing to include information about the new city bureaucracy the measure creates,  
19 directed by individuals who are not elected. Nor does it include the new kinds of powers the  
20 measure grants the new bureaucracy, such as the making and implementing of city policy  
21 without control by elected officials.”

22 (8) The question omits information essential to voters’ understanding of the  
23 measure by failing to explain that the tax revenues will go to private entities, not to the City, to  
24 perform the proposed activities.

25 c. The summary does not adequately summarize the measure and its major effect as  
26 required by ORS 250.035(1)(c) for the following reasons:

1           (1)     The summary is inaccurate, vague, and misleading by using the term  
2 “surcharge” to describe the tax the measure imposes. The tax the measure imposes is not a  
3 surcharge as the term is commonly understood. The use of surcharge may also confuse and  
4 mislead voters because the term in the measure conveys a meaning different than when used in  
5 the current code. If the title uses the term “surcharge,” the title should alert voters that the term  
6 is undefined.

7           (2)     The summary fails to inform voters that the revenues from the tax will be  
8 provided to private corporations to perform the activities the measure envisions; the revenues  
9 will not go, as voters would expect, to city workers to carry out city tasks.

10          (3)     The summary fails to inform voters that, unlike other taxes a covered  
11 taxpayer may incur, the “surcharge” is not deductible from the income tax the city already  
12 imposes on business.

13          (4)     The summary improperly favors passage of the measure by listing uses of  
14 the tax using labels that are inaccurate and chosen because most likely to appeal to voters.

15          (5)     The summary omits information essential to voters’ understanding of the  
16 measure by failing to include information about the new city bureaucracy the measure creates or  
17 the new kinds of powers the measure grants the new bureaucracy, including the making and  
18 implementing of city policy by individuals who not elected without control by elected officials.

19          (6)     The summary fails to provide any context of existing law, such as what  
20 businesses pay the tax imposed by the Business License Law and how the tax the measure  
21 imposes interacts with the existing tax scheme.

22          (7)     The summary provides examples of projects the measure’s tax could fund  
23 instead of providing an explanation of the actual changes the measure makes to current law.

24          (8)     The summary provides an incomplete and inadequate explanation of the  
25 taxpayers and activities subject to the surcharge and not subject to the surcharge.

26 ///

6.

This Court should certify a ballot title that reads:

**Caption:** Imposes tax on certain retailers' sales; funds private energy projects.

**Question:** Shall City impose 1% tax on "large retailers'" sales of goods/services to fund grants for private energy projects?

**Summary:** Measure amends Portland Business License Tax, which taxes businesses' net incomes, by imposing a 1% tax on gross sales of goods and services in Portland by "large retailers" (businesses with gross retail sales nationally exceeding \$1 billion and retail sales within Portland of at least \$500,000 in the prior tax year). Retail sales include services, such as banking and insurance. Tax on gross sales does not reduce income subject to tax.

Covers sales to "consumers" (undefined), excludes retail sales of qualified groceries, medicine and drugs, and health care services. Measure exempts utilities; manufacturers; cooperatives recognized under state or federal law; federal or state credit unions.

Measure directs proceeds to a new fund for grants to private nonprofit corporations for: renewable energy and energy efficiency projects; regenerative agriculture, green infrastructure projects; job training, apprenticeship programs.

Measure establishes appointed nine-member committee of measure supporters to oversee fund, solicit and evaluate program applications, recommend programs to the Mayor and City Council for funding. Allows committee to hire own staff, enter into contracts; limits certain administrative costs. Other provisions.

WHEREFORE, Petitioner prays for a judgment as follows:

1. Declaring the ballot title to be insufficient, not concise, and unfair, and not conforming to the requirements of ORS 250.035.

2. Certifying to the County Clerk a ballot title that conforms to the requirements of ORS 250.035 as set forth in paragraph 6 above.

3. Awarding Petitioner the costs and disbursements incurred herein.

1           4.     Awarding any other relief the Court considers just and equitable.

2                     DATED this 14th day of March, 2018.

3                                     DAVIS WRIGHT TREMAINE LLP

4  
5                                     By /s/ Gregory A. Chaimov

6                                     Gregory A. Chaimov, OSB #822180

7                                     Telephone: 503-778-5328

8                                     E-mail: gregorychaimov@dwt.com

9                                     Facsimile: 503-778-5299

10                                    Attorneys for Petitioner

PORTLAND CLEAN ENERGY COMMUNITY BENEFITS INITIATIVE 2018

RECEIVED  
MAY 10 10 51 AM  
AUDITOR

The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses).

**Section 1 – Findings**

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City's Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City's overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

**Section 2 – Policy and Purpose of Initiative**

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland's Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.



2. This ordinance requires large retailers (those with gross revenues nationally exceeding \$1 billion, and \$500,000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Clean Energy Community Benefits Fund." The money in this fund will be used to finance programs that meet the following priorities:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
  - b. Clean Energy Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
  - c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a "Portland Clean Energy Community Benefits Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

### **Section 3. Definitions**

Unless otherwise defined in this section, terms that are defined in Portland's Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. "Bank" has the same meaning as used in ORS § 706.008(1).
2. "City" means the City of Portland.
3. "Clean renewable energy" means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
  - a. heating, lighting water and cooling efficiencies;
  - b. repairs to increase the performance of the building envelope;
  - c. community initiated energy plans;
  - d. energy storage; and
  - e. green building design.
5. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
  - a. protections and restoration of urban tree canopy;
  - b. protection and restoration of greenspace and wetlands; and
  - c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as "regenerative agriculture."
7. "Green infrastructure" means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
  - a. urban tree canopy;
  - b. green roofs;
  - c. greenspace protection;
  - d. bioswales; and
  - e. green streets.
8. "Large retailer" means a business that:
  - a. is subject to the Portland Business License Tax;
  - b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded \$1 billion (\$1,000,000,000) in the prior tax year; and
  - c. has annual gross revenue from retail sales within the City of \$500,000 or more in the prior tax year.
  - d. the term "Large Retailer" does not include:
    - i. any manufacturer or other business that is not engaged in retail sales within the City;
    - ii. any entity operating a utility within the City;

- iii. any cooperative recognized under state or federal law; or
  - iv. a federal or state credit union.
9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
  10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
  11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
  12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
  13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
  14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
  15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
  16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

#### **Section 4. Surcharge on Large Retailers Imposed**

1. **Imposition of Surcharge and Rate:** Large Retailers shall pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retail Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
  - a. The amount of the Portland Business License Tax, if any, paid to the city;
  - b. Retail sales of qualified groceries;
  - c. Retail sales of qualified medicines or drugs; and

- d. Retail sales of qualified health care services.
3. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

#### **Section 5. Surcharge Collection and Enforcement.**

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 7.02.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, those revenues shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

#### **Section 6. Portland Clean Energy Community Benefits Fund**

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the "Portland Clean Energy Community Benefits Fund" ("Fund").
2. Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
  - a. Clean Energy Projects:
    - i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
    - ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.

- b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
    - c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.
  3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
  4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
  5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

#### **Section 7. The Portland Clean Energy Community Benefits Fund Committee**

1. There shall be established a "Portland Clean Energy Community Benefits Fund Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
4. The Mayor shall appoint members of the Committee based on the following background and expertise:

- a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82<sup>nd</sup> Avenue.
  - b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
  - c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    - i. Residential renewable energy and energy efficiency projects;
    - ii. Commercial renewable energy and energy efficiency projects;
    - iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    - iv. Experience promoting minority-owned and/or women-owned businesses;
    - v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    - vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
  - d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.
5. The Committee shall:
- a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
  - b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
  - c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant nonprofit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
  - d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
  - e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the

City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.

- f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.
  - g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.
6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

#### **Section 8. Funding Allocation Priorities**

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
  - a. 40% to 60%: Renewable energy and energy efficiency programs.
    - i. This category includes residential, commercial and school-based projects.
    - ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
    - iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.

- iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.
  - b. 20% - 25%: Clean energy jobs training, apprenticeships and contractor support.
    - i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
    - ii. Programs supporting entry into union registered apprentice trades shall be a high priority.
  - c. 10% - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
    - i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
    - ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.
  - d. 5%: Future Innovation
    - i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.
- 2. In making funding decisions, the Committee shall consider the following:
  - a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
  - b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82<sup>nd</sup> Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
  - c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in



partnership with other non-profit entities, government entities or for-profit businesses.

- d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
  - e. If there are insufficient qualified applicants, funds may be held over to the following year.
  - f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.
3. Terms of Grants
- a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
  - b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contractor Equity Agreement developed by the Committee.
  - c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

#### **Section 9. Amendment to Portland City Code PCC 7.02.600(G)**

Portland City Code 7.02.600 (Income Determinations) is amended to read as follows (*italicized and bolded language is new*):

"A. Owners Compensation Deductions. "Owners Compensation Deduction" is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division's discretion.

1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

B. Sole Proprietorships. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

C. Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

D. Corporations. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

E. Estates and Trusts. In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

F. Non-business Income. In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.

G. Taxes Based on or Measured by Net Income. In determining income, no deduction is allowed for taxes based on or measured by net income *or for the surcharge imposed by this measure*. No deduction is allowed for the federal built-in gains tax.

H. Ordinary Gain or Loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

I. Net Operating Loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.
2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.
3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.
4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period."

#### **Section 10. Severability clause.**

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.

## Portland Clean Energy Community Benefits Initiative 2018

### CAPTION

Imposes surcharge on certain retailers; funds clean energy, job training. (10)

### QUESTION

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs? (20)

### SUMMARY

Measure amends code to require large retailers in Portland (those with total revenue of over 1 billion dollars annually and Portland revenue of over \$500,000 annually) to pay 1% surcharge on gross revenue from retail sales within Portland into a new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicine or drugs, and health care services are not included in gross revenue.

Funds can only be spent on:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power or hydropower that potentially harms aquatic species
- Heating, lighting, water and cooling efficiencies
- Green building design
- Urban tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for disadvantaged workers, such as:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Accountability measures:

- Resident committee makes funding recommendations, oversees progress on goals.
- Annual financial audit; performance audit every two years.
- Administrative costs cannot exceed 5%.

Other provisions. (175)

## **PORTLAND CLEAN ENERGY COMMUNITY BENEFITS INITIATIVE 2018**

### **CAPTION**

Imposes surcharge on certain retailers; funds clean energy, job training. (10)

### **QUESTION**

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy (defined) projects, job training? (20)

### **SUMMARY**

Measure amends code to require Portland retailers with total annual revenue over 1 billion dollars and Portland annual revenue over 500,000 dollars to pay 1% surcharge on gross revenue from retail sales (defined) within Portland. Proceeds placed into new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicines, health care services excluded from gross revenue.

Measure creates new Portland Clean Energy Community Benefits Fund Committee; will exclusively recommend to Mayor distributions of Fund proceeds as grants to private, Oregon nonprofit organizations, for:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power, or certain hydropower
- Heating, lighting, water, cooling efficiencies
- Green building design
- Tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for traditionally underemployed, economically disadvantaged workers, including:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Annual financial audit; biennial performance audit.

Administrative costs cannot exceed 5%.

Other provisions. (175)



## INTRODUCTION

These consolidated cases came on for hearing on April 20, 2018, on Petitioner Pat McCormick's Petition For Different Ballot Title and Petitioner Robert Short's Petition To Seek Alternative Ballot Title. Petitioner McCormick appeared by and through his counsel, Gregory A. Chaimov. Petitioner Short appeared by and through his counsel, Jill Gibson. Respondent Tracy Reeve, in her official capacity as Portland City Attorney, appeared by and through Deputy City Attorney Maja Haium. Intervenors Adriana Voss-Andrea, Elbert Mondaine, and Paige Richardson appeared by and through their counsel, Margaret Olney.

Petitioners, who are City of Portland electors, challenge (on largely, but not exclusively, similar grounds) the ballot title (hereafter, "Ballot Title") that Respondent has provided and certified to the City of Portland for a prospective petition entitled "Portland Clean Energy Community benefits Initiative 2018" (hereafter, "PDX 04"). Petitioners are dissatisfied with the Ballot Title and bring this challenge pursuant to ORS 250.296 on the grounds that the Ballot Title is insufficient, not concise, and unfair.

For the reasons described below, the Petitions are GRANTED IN PART.

## PROCEDURAL HISTORY

ORS 250.275(3)(a) and Portland City Code 2.04.060(A) required Respondent, as Portland City Attorney, to provide and certify to the City of Portland Auditor (as the city elections officer for Portland<sup>1</sup>) the Ballot Title for PDX 04. Respondent so did. Petitioners timely filed the instant challenges to the Ballot Title.

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<sup>1</sup> See PCC 2.02.020

On March 23, 2018, the Court entered a stipulated order allowing intervention in this action by Adriana Voss-Andrea, Elbert Mondaine, and Paige Richardson. On April 3, 2018, the Court entered a stipulated order consolidating these cases.

## **DISCUSSION, ANALYSIS & CONCLUSIONS**

### 1. Background of PDX 04

PDX 04 runs 12 pages, and proposes to do a number of things. As most relevant to the challenges brought by Petitioners, PDX 04 would effect the following changes to the Portland City Code (PCC) if passed:

- Impose a one percent surcharge on the Portland-generated gross revenues of “large retailers.” PDX 04 defines a “large retailer” as an entity that is: (1) subject to the Portland Business License Tax; (2) had annual gross revenue from domestic retail sales that exceeded one billion dollar in the previous tax year; (3) had annual gross revenue from retail sales within the City of Portland of \$500,000 or more in the prior tax year. (PDX 04 at 3). “Retail sale” are defined as “sale[s] to a consumer for use or consumption, and not for resale,” and include “the sale of services, including but not limited to retail banking services.” (*Id.* at 16).

- The proceeds from the surcharge would be deposited into a newly created Portland Clean Energy Community Benefits Fund (the “Fund”). (*Id.* at 5). The Fund would be overseen by a newly created Portland Clean Energy Community Benefits Fund Committee (the “Committee”), which would be made up of nine Portland residents appointed by the Portland Mayor. (*Id.* at 6).

- The Committee would make recommendations to the Portland Mayor regarding the use of the proceeds in the Fund; those proceeds could be expended only in the form of grants



to Oregon-registered, private nonprofit organizations. (*Id.*) Those grants would be made “consistent with the goals” of PDX 04, and to the extent possible would be allocated as follows: (1) 40-60% of granted funds to “Renewable energy and energy efficiency programs”; (2) 20%-25% of granted funds to “Clean energy jobs training, apprenticeships and contractor support”; (3) 10-15% of granted funds to “Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases”; and (4) 5% of granted funds to “Future Innovation.” (*Id.* at 8-9).

2. Legal Standards for a Challenge To a Ballot Title Certified By The City Attorney

ORS 250.035(1) requires that a ballot title for a local measure contain three separate sections: (1) “A caption of not more than 10 words which reasonably identifies the subject of the measure”; (2) “A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure”; and (3) “A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.”

ORS 250.296(1) provides that any elector who is dissatisfied with a ballot title filed with a city elections officer by a city attorney “may petition the circuit court of the judicial district in which the city is located seeking a different title and stating the reasons the title filed with the court is insufficient, not concise or unfair.” Petitioners have properly followed this procedure.

ORS 250.296(1) describes the duties of a circuit court confronted by such a petition (or, as here, consolidated petitions): the court “shall review the title and measure to be initiated or referred, hear arguments, if any, and certify to the city elections officer a title for the measure which meets the requirements of ORS 250.035.” The circuit court must conduct its review and

certify to the City of Portland Auditor a statutorily compliant ballot title “expeditiously to [e]nsure the orderly and timely circulation of the petition.” ORS 250.296(3).

3. Standard and Scope of Circuit Court’s Review on Ballot Title Challenge

The parties disagree about the proper standard of review that the Court should utilize in evaluating the Ballot Title’s legal sufficiency. The Court can find no guidance on this issue outside of the statute which assigns the Court its task in these circumstances. Fortunately, the statute itself provides a clear path forward. ORS 250.296(1) commands that a Circuit Court presented with a Petition challenging a ballot measure first review the ballot title and the underlying proposed measure. The court must then consider a petitioner’s arguments. *Id.* Finally, the court must “certify to the city elections officer a title which meets the requirements of ORS 250.035.” *Id.*

In view of the above, the Court in this case has reviewed the Ballot Title, PDX 04 and all arguments presented by the parties in writing and orally at argument. If the Court concludes herein that the Ballot Title in one or more ways does not comply with the requirements of ORS 250.035, the Court will cure those deficiencies through edits that bring the Ballot Title into statutory compliance. The Court will then certify that version of the Ballot Title to the City of Portland Auditor. For those sections or on those matters which the Court believes the Ballot Title is already compliant with the statute, the Court will not endeavor to try to gratuitously “improve” the Ballot Title.

4. Consideration of Petitioners’ Arguments That the Ballot Title Is Insufficient, Not Concise, and/or Unfair

In this case, there is no dispute that the Ballot Title includes the three required sections, and that those sections comply with the statutory word limits. Petitioners each challenge the

Ballot Title Caption, Question, and Summary for failing to meet ORS 205.035's substantive requirements for those sections.

**a. The Ballot Title Caption**

ORS 250.035(1) requires that the caption section for a local measure's ballot title "reasonably identif[y] the subject of the measure." Here, the Ballot Title Caption reads, in its entirety: "Imposes surcharge on certain retailers; funds clean energy, job training."

Each Petitioner argues that the Ballot Title's Caption fails to reasonably identify the subject of PDX 04. Petitioners bring a number of arguments to bear, but the strongest – yet still unavailing – are those contending that the use of the word "surcharge" in the caption to describe the financial obligation imposed on large retailers is insufficient, not concise, or unfair. Petitioners argue that the imposition of this obligation does not create a "surcharge," but a "tax," and that the Caption (and the Ballot Title generally) should use the word "tax" instead of "surcharge." (McCormick Petition at 2; Short Petition at 2). Petitioners' nuanced arguments largely reduce to a suggestion that "surcharge" is misleading because PDX 04 would create a new and different tax from those already paid by large retailers, rather than an increase an already existing one.

Respondent and Intervenors disagree, and argue that the term "surcharge" accurately describes the one percent obligation that PDX 04 would impose. Respondent argues that "surcharge" is superior to "tax" because "surcharge" makes clear that PDX 04 would impose an obligation in addition to already extant taxes imposed on large retailers. Respondent reasons that use of the word "tax" would mislead voters by suggesting (incorrectly) that PDX 04 imposes an obligation on large retailers who do not already pay taxes. (Respondent's Response at 5). Respondent also identifies alternative words she considered in drafting and certifying the Ballot

Title, including “surtax” and “additional tax.” (*Id.* at 6). In Respondent’s view, “additional tax” is too long for a ten-word caption, and “surtax” is a “technical term not likely known to many voters.” (*Id.*)

Intervenors note that PDX 04 itself uses the term “surcharge,” and that the Oregon Supreme Court has recently explained that whether a ballot title can permissibly use a term pulled from the underlying ballot measure itself turns on whether the “use of technical, legal, or unique wording drawn from the measure’s text results in a caption that is impermissibly misleading or confusing.” (Intervenors’ Response at 5 (quoting *Parrish v. Rosenblum*, 362 Or 96, 106 (2017))). Intervenors argue that “surcharge” is not misleading or confusing because it accurately conveys that large retailers will have to pay something in addition to what they already pay under current law.

Respondent and Intervenors have the better of this argument. “In determining whether a caption reasonably identifies the subject matter of a proposed measure, [a] court examines the text of the proposed measure itself.” *Mabon v. Myers*, 332 Or 633, 638, 33 P3d 988, 990 (2001). PDX 04 plainly uses the word “surcharge” consistently with the meaning it carries in the Ballot Title Caption.

Moreover, that meaning accurately describes PDX 04’s creation of a new financial obligation that would be imposed on large retailers. When a court reviews the text and context of an initiative, it “typically gives words of common usage their plain, natural, and ordinary meaning.” *Coultas v. City of Sutherlin*, 318 Or 584, 588–89, 871 P2d 465, 467 (1994) (citing *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993)). “Surcharge” is popularly defined in relevant part as “a charge in excess of the usual or normal amount: an additional tax, cost, or impost.” Webster’s Third New Int’l Dictionary 2299

(unabridged ed 2002). As used in the Ballot Title Caption (and elsewhere in the Ballot Title), “surcharge” accurately captures and relates the notion that this new financial obligation on large retailers is in addition to those financial obligations already imposed on those same large retailers. While the Court agrees with Petitioner McCormick that the financial obligation imposed by PDX 04 is calculated on a different basis than the business taxes already imposed on those large retailers, the fact is that PDX 04 imposes an additional obligation on those same large retailers.

The Court finds that the Ballot Title Caption, as certified by Respondent to the City of Portland Auditor “reasonably identifies the subject” of PDX 04.

**b. The Ballot Title Question**

ORS 250.035(1) requires that the question section of a local ballot measure’s title must “phrase[] the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure.” Here, the Ballot Title Question reads, in its entirety: “Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy projects, job training programs?”

Petitioners present several arguments in favor of their position that the Ballot Title Question fails to meet the statutory standard. Having considered all of Petitioners’ arguments with respect to the Ballot Title Question, as well as all of Respondent’s and Intervenor’s arguments in response, the Court respectfully disagrees with all but one of those arguments. The Court will discuss in detail only the argument on which Petitioners prevail: that the Ballot Title Question fails to note that PDX 04 defines the term “clean renewable energy” with a technical and specific definition that may differ from that commonly understood by many voters.

Petitioner Short notes that the term “clean renewable energy” is specifically and specially defined by PDX 04 as follows:

“Clean renewable energy” means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native American or other communities that rely on such species shall not be appropriate for support under this measure.

Petitioner Short argues that this definition is “likely at odds” with most voters’ commonly understood definition for “clean renewable energy.” (Short Memorandum at 9).

Respondent and Intervenors argue that the term “clean renewable energy” is “fair and plainly phrase[s]” the chief purpose of the measure, and is consistent with “common understanding” (Respondent’s Response at 10; Intervenors’ Response at 15.)

Whether or not a voter would respond affirmatively on the Ballot Title would turn, in part, on how that voter felt about funding “clean renewable energy” projects. A voter who read PDX 04 itself would have a clear understanding of what that term meant, and what projects would be excluded from funding even if they met the definition of “clean renewable energy”. A voter who only read the Ballot Title Question, however, might be misled into thinking that this term means something different from the definition assigned to it by PDX 04. To meet the statutory mandate that “an affirmative response to the question correspond[] to an affirmative vote on the measure,” the Ballot Title Question must obviate the risk of this confusion by signalling that the term “clean renewable energy” is defined by PDX 04 in a particular way.

The Court finds that to comply with the statute, the Ballot Title Question must convey to voters that the term “clean renewable energy” is assigned a particular meaning by PDX 04. The Court finds that the Ballot Title Question can accomplish this with a minimal revision: the

addition of the word “(defined)” after the term “clean renewable energy.” The Court finds that with that sole change, the Ballot Title Question “reasonably identifies the subject” of PDX 04.

**c. The Ballot Title Summary**

ORS 250.035(1) requires that the summary section of a local ballot measure’s title be “[a] concise and impartial statement” that “summarize[es] the measure and its major effect.”

Petitioners put forward myriad arguments that the Ballot Title’s Summary is insufficient, not concise, and unfair. Having carefully considered all of Petitioners’ arguments on this point, as well as all of Respondent’s and Intervenors’ responses, the Court will discuss in detail only the argument on which Petitioners prevail: the Ballot Title Summary’s failure to identify the proposed new Committee, its proposed duties, and the limited ways by which Fund proceeds may be disbursed.

Petitioners argue that the Ballot Title Summary is insufficient because it fails to note: (1) that PDX 04 creates a new organ of Portland city government, the “Portland Clean Energy Benefit Fund Committee”; and (2) that the Committee will oversee the disbursement of all of the monies generated by the surcharge (save for administrative costs) through recommendations to the Portland Mayor for the award of grants to Oregon-registered, private nonprofit organizations. (McCormick Memorandum at 12; Short Memorandum at 13).

The only reference in the Ballot Title’s Summary to the Committee or to its role is this sentence: “Resident committee makes funding recommendations, oversees progress on goals.”

Intervenors argue that there is nothing “novel” about the City making grants to private organizations to deliver services. Intervenors argue, further, that the use of the word “private” is an attempt to “bias voters against the measure” because voters may think that “private organizations” means the same thing as “for-profit entities.” (Intervenors’ Response at 10-

11). Respondent argues similarly to Intervenors, noting that “the City routinely grants tax-derived revenue to non-profits.” (Respondent’s Response at 15).

Petitioners have the better of this argument. There is no question that the Committee would be a new organ of Portland city government, whether or not its function would be novel. As drafted, the Ballot Title fails to explain that a new governmental body would be created; the term “resident committee” is both undefined and inapt. The Summary thus fails in its required task to “summarize [PDX 04] and its major effect.”

Similarly, it is unquestioned that this Committee would wield significant influence over the expenditures of the funds generated by PDX 04. Indeed, it would be the only body authorized to recommend disbursements via grants to nonprofit organizations. Moreover, those grants would be the exclusive means by which these funds could be disbursed. This exclusive disbursement mechanism, and the role the Committee would play in it, are both central to the major effect of PDX 04. The suggested fact that this mechanism and the role played in it by the Committee may not be novel in Portland government does not render them any less significant to the “major effect” of PDX 04. The Summary’s failure to describe them causes it to fail further in its required task to “summarize [PDX 04] and its major effect.”

In view of the above, the Court finds that in order to be successfully present “[a] concise and impartial statement” that “summarize[es] [PDX 04] and its major effect,” the Ballot Title Summary must: (1) state that PDX 04 would create a wholly new Committee; (2) state that the funds generated by the surcharge would be expended entirely (save for administrative costs) through grants to private non-profit organizations; and (3) state that the Committee would be the entity authorized to make recommendations for such grants to the Portland Mayor.

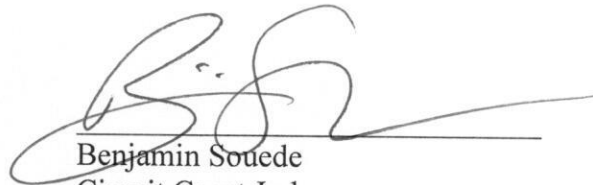


## CONCLUSION

For the reasons stated above, the Petitions in these consolidated actions are GRANTED IN PART. The Court has revised the Ballot Title in accordance with the above findings and conclusions.<sup>2</sup> Pursuant to ORS 250.296(1), the Court hereby certifies the revised Ballot Title, attached as Appendix A to this Opinion and Order, to the City of Portland Auditor, as the Portland city elections official.

Because these cases have been consolidated, Petitioners will jointly file a form of judgment.

Dated this 2<sup>nd</sup> day of May, 2018.



Benjamin Souede  
Circuit Court Judge

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<sup>2</sup> The Court has made additional changes to the Ballot Title to accommodate the substantive revisions while maintaining the Ballot Title's compliance with the word limits imposed by ORS 250.035(1). These additional changes are intended by the Court to be non-substantive.

## **PORTLAND CLEAN ENERGY COMMUNITY BENEFITS INITIATIVE 2018**

### **CAPTION**

Imposes surcharge on certain retailers; funds clean energy, job training. (10)

### **QUESTION**

Shall large retailers (defined) pay 1% surcharge on Portland revenues to fund clean renewable energy (defined) projects, job training? (20)

### **SUMMARY**

Measure amends code to require Portland retailers with total annual revenue over 1 billion dollars and Portland annual revenue over 500,000 dollars to pay 1% surcharge on gross revenue from retail sales (defined) within Portland. Proceeds placed into new Portland Clean Energy Community Benefits Fund. Certain sales of groceries, medicines, health care services excluded from gross revenue.

Measure creates new Portland Clean Energy Community Benefits Fund Committee; will exclusively recommend to Mayor distributions of Fund proceeds as grants to private, Oregon nonprofit organizations, for:

**Clean Energy Projects (approximately 50-75%):** renewable energy, energy efficiency and green infrastructure projects, such as:

- Energy not produced from fossil fuels, nuclear power, or certain hydropower
- Heating, lighting, water, cooling efficiencies
- Green building design
- Tree canopy

**Clean Energy Jobs Training (approximately 20-25%):** training that prioritizes workforce development for traditionally underemployed, economically disadvantaged workers, including:

- Communities of color
- Women
- Persons with disabilities
- Chronically underemployed

**Future Innovation (approximately 5%)**

Annual financial audit; biennial performance audit.

Administrative costs cannot exceed 5%.

Other provisions. (175)



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July 27, 2018

**RE: PDX 04 Qualifies for November Ballot**

Dear Chief Petitioners Voss-Andreae and Mondaine,

On July 5, 2018, the City of Portland received perfected initiative petition PDX 04, titled Portland Clean Energy Community Benefits Initiative 2018, purporting to include 61,728 signatures. Following the City and County petition review process governed by Portland City Code and state law, PDX04 qualifies to the November 6, 2018 General Election ballot.

Tim Scott, Director of Elections for Multnomah County, notified me today that the County's statistical sampling and verification process is completed. The sample indicates PDX 04 contains 39,755 valid signatures, exceeding the amount required.

Pursuant to Portland City Code Section 2.04.100 A., PDX04 will be filed with the City Council. If the Council does not adopt PDX 04 by non-emergency ordinance within 30 days of filing, PDX 04 will be certified to the ballot with the Multnomah County Elections Division as a measure proposed by initiative petition.

Please let me know if you have any questions.

  
Deborah Scroggin  
City Elections Officer

