

May 2016 Primary Election City-Referred Measures

[Measure 26-173 Motor Vehicles Fuels Tax](#)

Ballot Title Caption: Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety

On January 27, 2016, the Portland City Council Passed Resolution No. 37185, referring a measure to Portland voters on the May 17, 2016 Primary Election Ballot.

Resolution

Ballot Title

Explanatory Statement

[Additional Documents in E-Files](#)

Ballot Title Challenge

Final Documents

Judge Immergut Stipulated Order

Notice of Measure Election - Final Ballot Title

Final Explanatory Statement

Status

1/28/16 - Resolution filed with City Elections Officer; seven-day ballot title challenge period begins. An elector may file a petition for review of the ballot title in the Multnomah County Circuit Court no later than 5:00 p.m. on Monday, February 8th, 2016.

2/8/16 - Ballot title challenge filed in Multnomah County Circuit Court.

3/8/16 - Final Ballot Title and Explanatory Statement filed with City and City Elections Officer via Multnomah County Circuit Court Judge Immergut Stipulated Order.

3/15/16 - Elections Officer Files Measure with Multnomah County Elections Office. County issues measure # 26-173.

5/17/2016 - Election held; measure passed by voters. View official results.

May 2016 Primary Election - Official Results

Measure 26-173	Multnomah	Clackamas	Washington	Total	%
Yes	107,869	94	228	108,191	52.14%
No	98,922	166	206	99,294	47.86%
TOTAL	206,791	260	434	207,485	100%

BALLOT TITLE

CAPTION:

Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety

QUESTION:

Shall Portland adopt four year, 10 cents per gallon fuel tax dedicated to street repair, safety (including safer crossings, sidewalks)?

BALLOT SUMMARY:

Measure creates program dedicated to street repair, traffic safety through temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax, estimated to raise \$64 million over four years. Tax implemented no earlier than September 2016, expires in four years. Establishes license requirements.

Project categories with examples in each category:

- Street repair, (\$35.8 million) - Parts of SE Foster, N Denver, NE Alberta
- Safe Routes to School, (\$8.8 million) - Lent Elementary traffic calming, David Douglas HS sidewalks, George Middle School crossings
- Sidewalk completion, (\$6.4 million) - SW Capitol Highway, NE 14th
- High Crash Corridor safety improvements, (\$3.9 million) - lighting on SE Powell, crosswalk improvements on NE Sandy, 82nd Avenue, SW Beaverton/Hillsdale Highway
- Reducing bicycle / car conflicts, (\$5.6 million) - two Neighborhood Greenways in East Portland, safer bicycle routes downtown

- Intersection safety improvements, (\$3.4 million) - focused on improving access to transit:
NE MLK, US 30

Citizen oversight committee reviews expenditures, provides annual reports. Audits required.

EXHIBIT B – Ballot Title**BALLOT TITLE FOR VOTERS' PAMPHLET****CAPTION (up to 10 words):**

Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety

QUESTION (up to 20 words):

Shall Portland adopt four year, 10 cents per gallon fuel tax dedicated to street repair, safety (including safer crossings, sidewalks)?

BALLOT SUMMARY (up to 175 words):

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- Intersection safety improvements, (\$3.4 million) - focused on improving access to transit: NE MLK, US 30

Citizen oversight committee reviews expenditures, provides annual reports. Audits required.

EXHIBIT C

EXPLANATORY STATEMENT FOR VOTERS' PAMPHLET (up to 500 words)

Measure creates program dedicated to street repair, traffic safety through temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax, estimated to raise \$64 million over four years. Tax implemented no earlier than September 2016, expires in four years. Establishes license requirements.

Project categories with examples in each category:

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For a detailed list of projects, please visit portlandoregon.gov/transportation/betterstreets. If revenue or expenditure amounts differ from projections, the ratio of street repair to safety projects will remain the same (56% street repair to 44% safety projects).

For almost thirty years, Portland's streets have been deteriorating due to inadequate transportation funding. Every year, Portland's street maintenance backlog gets worse. Postponing repairs leads to worsening deterioration making future street repair more expensive. Street investments now save money later. Paving projects are selected using Portland's Pavement Management system and the project list shows examples of the projects that will be completed.

Working with neighborhoods and businesses, the City has developed plans for specific safety projects. These projects are designed to reduce crashes and fatalities, make it easier to cross streets to access transit, and improve safe access to parks and schools. Safety projects will be completed as listed. Any necessary refinements will be approved by a citizen oversight committee.

In their 2015 report, *Portland's Streets: Ending the funding gridlock*, the City Club identifies a local gas tax as a much needed, new funding source for transportation investments. The City Club's committee spent seven months studying options to fund

street maintenance and safety improvements. They concluded that delay is not a responsible option and a local gas tax should be part of the solution.

City General Funds, including property taxes, primarily support the City's Fire, Police and Parks Bureaus. Over the last ten years, transportation has received less than 2.5% of General Funds from the Adopted Budget. Historically, Portland relied on State and Federal fuel taxes for transportation funding, but the purchasing power of these taxes has diminished.

An oversight committee will review use of funds and report annually to City Council to ensure projects funded through this tax are consistent with voter intent.

The City will annually audit the Street Repair and Traffic Safety Program. This audit will be shared with the oversight committee and the public.

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3.

On information and belief, the ballot title and explanatory statement challenged herein were prepared by either the City Council or the City Attorney, or both; therefore, the City Council and the City Attorney are proper respondents.

4.

The ballot title and explanatory statement challenged by petitioner were prepared by the City Council and/or the City Attorney as part of an ordinance adopted by the City Council pursuant to Resolution No. 37185, adopted by the City Council on January 27, 2016, and filed with the city elections officer on January 28, 2016. A copy of Resolution No. 31785 is attached hereto as Exhibit 1. The ordinance adopted pursuant to the resolution was referred to the voters of the City of Portland for the May 17, 2016 election.

5.

Petitioner timely filed this Petition within seven business days after the ballot title was filed with the city elections officer.

APPLICABLE LAW

6.

ORS 250.035(1) provides: "The ballot title of any measure...shall consist of:

- (a) A caption of not more than 10 words which reasonably identifies the subject of the measure;
- (b) 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
- (c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect."

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7.

ORS 251.345 provides in relevant part: “[T]he governing body for any electoral district that has referred a measure to the voters shall submit an impartial, simple and understandable statement explaining the measure and its effect.”

BALLOT TITLE CHALLENGE

8.

ORS 250.296(1) provides: “Any elector dissatisfied with a ballot title filed with the city elections officer by the city attorney or the city governing body, 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.”

9.

The ballot title submitted by the City Council and/or the City Attorney for the measure, attached hereto as Exhibit 2, is insufficient, not concise, and unfair for the reasons set forth below.

10.

The only thing referred to the voters by the City Council’s resolution is the ordinance itself, not any of the other exhibits or attachments to the resolution. The ordinance itself, attached hereto as Exhibit 3, is simple and understandable. It imposes a 10 cent per gallon tax upon gasoline and some diesel sold in the City of Portland, and it dedicates that tax revenue to construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads and streets. Exhibit 3, p. 3 (Section 17.105.020). The ordinance does not list any specific projects to be undertaken by the City, but it does make a general statement that the projects will include, **but not be limited to**, projects in certain general categories. The ordinance does not tax all motor vehicle fuel; it exempts diesel fuel used in

1 trucks over 26,000 pounds, so all fuel for heavy trucks will not be burdened by this tax.

2 11.

3 The only thing that the voters of the City of Portland will be voting on is the
4 authorization to raise the tax money and spend it on those things that are authorized by
5 Article IX, Section 3a of the Oregon Constitution. Exhibit 3, p. 3 (Section 17.105.020B).

6 12.

7 The ballot title is required to be a concise and fair statement of what is before
8 the voter, not a campaign piece for those advocating for its passage. Under the ordinance
9 passed by the City Council, all of the money raised could go toward construction of new
10 streets. The ordinance requires the money raised by this tax to go into the Street Repair and
11 Traffic Safety Program (Section 17.105.020), and that program is simply the Transportation
12 Operating Fund of the City. Exhibit 3, p. 4 (Section 17.105.025J).

13 13.

14 The voter is not voting on those specific programs that the City may or may not
15 fund out of this tax. If the ballot title gives the impression that specific programs are to be
16 funded, it is not an accurate statement of what is before the voter.

17 14.

18 The measure before the voters simply imposes a 10 cent per gallon tax on some
19 motor vehicle fuel, exempts heavy trucks from the tax, and tells the voter that the City will spend
20 the money as authorized by the Oregon Constitution. It also tells the voter that the City will
21 include projects in certain specified categories, but the City is not limited to spending the money
22 in these categories. Exhibit 3, p. 3 (Section 17.105.020).

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15.

The caption prepared by the City for the measure says: “Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety.” This caption is insufficient and unfair, and does not identify the subject of the measure. “The caption is the ‘headline’ of the ballot; it ‘provides the context for the reader’s consideration of the other information in the ballot title’ and must describe the proposed measure’s subject matter accurately.” *Towers v. Rosenblum*, 354 Or 125, 129 (2013). The “subject matter” of a measure refers to “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Buehler v. Rosenblum*, 354 Or 318, 323 (2013). “The caption must also identify the measure’s subject matter in terms that will not ‘confuse or mislead potential petition signers and voters,’ and it cannot overstate or understate the scope of the legal changes that the measure would enact.” *Id.* (internal citations omitted). “A caption may describe accurately the major effect of a measure and still not comply with the requirements of the statute if the description is ‘too vague and gives voters no clear picture of what is at stake.’” *Girod v. Kroger*, 351 Or 389, 397 (2011).

16.

The City’s caption is more of a campaign slogan than a factual statement of the subject of the measure. For these reasons, the caption should be revised to read as follows:

“Temporary 10 Cent Motor Vehicle Fuel Tax, Exempts Heavy Trucks”

17.

The question prepared by the City also reads like a campaign slogan: “Shall Portland adopt four year, 10 cents per gallon fuel tax dedicated to street repair, safety (including safer crossings, sidewalks)?” The tax is dedicated to all those purposes authorized by the Oregon Constitution. It can be used for street repair and safety programs, but that is a

1 choice the City Council will make at a later date. This is not before the voter, and the voter
2 has no say in that decision if the tax is passed. For these reasons, the question should be
3 revised as follows:

4 **“Shall Portland adopt four year, 10 cents per gallon fuel tax, exempting heavy trucks,
5 dedicated to constitutionally authorized purposes?”**

6 18.

7 Lastly, the ballot summary prepared by the City states:

8 Measure creates program dedicated to street repair, traffic safety through
9 temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for
10 vehicles not subject to weight-mile tax, estimated to raise \$64 million over
11 four years. Tax implemented no earlier than September 2016, expires in four
12 years. Establishes license requirements.

13 Project categories with examples in each category:

- 14 • Street repair, (\$35.8 million) – Parts of SE Foster, N Denver, NE Alberta
- 15 • Safe Routes to Schools, (\$8.8 million) – Lent Elementary traffic calming,
16 David Douglas HS sidewalks, George Middle School crossings
- 17 • Sidewalk completion, (\$6.4 million) – SW Capitol Highway, NE 14th
- 18 • High Crash Corridor safety improvements, (\$3.9 million) – lighting on
19 SE Powell, crosswalk improvements on NE Sandy, 82nd Avenue, SW
20 Beaverton/Hillsdale Highway
- 21 • Reducing bicycle / car conflicts, (\$5.6 million) – two Neighborhood
22 Greenways in East Portland, safer bicycle routes downtown
- 23 • Intersection safety improvements, (\$3.4 million) – focused on improving
24 access to transit: NE MLK, US 30

18 Citizen oversight committee reviews expenditures, provides annual reports. Audits
19 required.

20 19.

21 ORS 250.035(1)(c) requires that the ballot title contain “a concise and
22 impartial statement of not more than 175 words summarizing the measure and its major
23 effect.” The purpose of a ballot summary “is to help voters understand ‘what will happen if
24 the measure is approved,’ but speculation about potential secondary effects is not permitted.”

1 *Rooney v. Kulongoski*, 322 Or 15, 37 (1995) (internal citations omitted).

2 20.

3 The ballot summary prepared by the City Council and/or the City Attorney
4 can best be summarized as an argument in favor of the measure that is more suited to be
5 in the voters' pamphlet argument section on behalf of the proponents. It is not impartial.
6 ORS 251.355 allows for arguments in favor or in opposition to a measure. Such arguments
7 have no place in a ballot title.

8 21.

9 The summary drafted by the City is supposed to be a concise and impartial
10 statement summarizing the measure and its major effect. ORS 250.035(1)(c). It is not
11 supposed to be a list of aspirational projects that may or may not be undertaken by the City,
12 and the voter is not voting on what specific projects will or will not be undertaken by the
13 City. Again, the only thing before the voter is whether or not to adopt a motor vehicle fuel
14 tax that can be spent by the City in any way authorized by the Oregon Constitution. The City
15 attached a list of potential projects as an exhibit to the Resolution passing this ordinance to
16 the voters, but that list is not a part of what will be decided by the voter.

17 22.

18 The City should not be able to deceive the voter into thinking that specific
19 projects will be undertaken with this new money. Similarly, opponents of the tax should not
20 be able to include in the ballot summary a statement that the City has, on many occasions,
21 promised to use funds in a specific manner and then not used those funds as promised.
22 An example would be the utility fee (Portland City Code Chapter 7.12), once dedicated in
23 part to road maintenance and now not used for the promised purpose. For these reasons,
24 the summary should be revised as follows:

1 in the county's voters' pamphlet, and should further be ordered to rewrite the explanatory
2 statement in a way that is impartial, simple, and understandable.

3 WHEREFORE, Petitioner prays for judgment of the Court as follows:


4 1. On Petitioner's ballot title challenge against Respondents, rejecting the City's
5 ballot title (Exhibit 2) and instead certifying to the city elections officer Petitioner's proposed
6 ballot title as set forth in bold type in paragraphs 16, 17 and 22 above; and

7 2. On Petitioner's explanatory statement challenge against Respondents,
8 enjoining Respondents from submitting the explanatory statement as written (Exhibit 4) to
9 the county for inclusion in the county voters' pamphlet and ordering Respondents to rewrite
10 the explanatory statement in a way that is impartial, simple, and understandable; and

11 3. For such other relief as the Court deems just and equitable.

12 DATED this 5th day of February, 2016.

13 THE ROMAIN GROUP, LLC

14 

15 Paul R. Romain, OSB No. 732565
16 *Of Attorneys for Petitioner*

17 BLACK HELTERLINE LLP

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19 Margaret E. Schroeder, OSB No. 025748
20 *Of Attorneys for Petitioner*

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RESOLUTION NO. 371 85 *As Amended*

Refer a measure to City voters for the May 17, 2016 election authorizing the creation of a program dedicated to street repair and traffic safety through a temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax and create City Code 17.105. (Resolution)

Whereas, one of the primary responsibilities of the City of Portland is to protect public safety, health, and welfare by ensuring safe and well-maintained streets for its community members, businesses, and visitors; and

Whereas, the City is behind in addressing the maintenance needs of much of its aging infrastructure. Portland's 4,834 lane miles of paved streets show continuing decline, with 49 percent of the city's busiest streets in poor or very poor condition, the most expensive categories to repair; and

Whereas, the Portland Bureau of Transportation (PBOT) estimates that it would cost an additional \$119 million per year for ten years to improve the city's pavement system to a fair or better condition. Deferring these improvements will result in higher costs in the out-years since it is more expensive to rebuild streets after they have failed than it is to perform timely street repair; and

Whereas, the traditional sources the City has relied on for transportation funding – State and County gas taxes – continue to fail to produce the level of revenue needed to adequately address street repair and traffic safety needs; and

Whereas, there is widespread recognition that local governments must develop new or additional mechanisms to supplement existing resources to fund their transportation needs; and

Whereas, Twenty-six local jurisdictions (twenty-four cities, two counties) in Oregon have implemented a local tax on gasoline to address their respective transportation needs. The rationale of a motor vehicle fuels tax is that those using the transportation system have a responsibility to help pay the costs required to maintain the assets and improve the safety of that system; and

Whereas, in July 2014 the Portland Bureau of Transportation began community conversations on a fair and reasonable approach to raising new revenue to fund outstanding street repair and traffic safety needs. PBOT convened a funding advisory committee, a business work group, and a nonprofit and low-income work group. The work groups were comprised of representatives of more than 60 different groups and organizations across Portland; and

Whereas, the three work groups agreed there is considerable need for new funds to address the street repair needs of existing infrastructure and to address known traffic safety needs. A new revenue generating mechanism is needed because PBOT's current budget is insufficient to address the problems; and

Whereas, in September 2015, the City Club of Portland published a report, *Portland's Streets: End the funding gridlock*. The City Club recommended a motor vehicle fuels tax, specifically stating, "The City should immediately pursue a fee for use. At the moment, the most technically feasible is a city motor vehicle fuels tax. A motor vehicle fuels tax would generate revenue from most users – including those transporting goods across Portland streets and those who don't reside in Portland – and would discourage congestion and pollution"; and

Whereas, a temporary ten (10) cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax is estimated to raise \$64 million over four years; and

Whereas, the tax will be collected no earlier than September 2016, and expire four years after collection begins; and

Whereas, PBOT is exploring different mechanisms for capturing revenue from heavy weight vehicles that currently pay weight-mile taxes; and

Whereas, PBOT will use the revenue from the temporary motor vehicle fuels tax to create a Street Repair and Traffic Safety Program which will be restricted to street repair and traffic safety projects; and

Whereas, PBOT has developed a list (Exhibit D) of transportation maintenance and safety projects that will be undertaken by the Street Repair and Traffic Safety Program. The project list has been identified using existing transportation plans, known community priorities, review from transportation modal committees, and extensive public involvement; and

Whereas, the paving projects on the list (Exhibit D) are examples of the type of paving projects to be undertaken over the four-year time period, with Portland's Pavement Management System and the Street Repair and Traffic Safety Citizen Oversight Committee making recommendations for final project selection; and

Whereas, the safety projects on the list (Exhibit D) are the specific projects to be completed, with any changes processed through the Street Repair and Traffic Safety Program Oversight Committee. If any projects are funded from other sources, or no longer required, additional safety projects will be recommended by the Oversight Committee; and

Whereas, if revenue or expenditure amounts differ from projections, the ratio of street repair to safety projects will remain the same (56% street repair to 44% safety projects); and

Whereas, as detailed in Exhibit E, a Citizen Oversight Committee will be appointed to ensure Program accountability by reviewing revenues, expenditures, and program/project implementation. The Citizen Oversight Committee will provide an annual report to City Council and the public; and

Whereas, the City will annually audit the Street Repair and Traffic Safety Program. This information will be provided to the Oversight Committee and the public; and

Whereas, Oregon Revised Statutes Chapter 319, subject to voter approval authorizes the City to collect a motor vehicle fuels tax. The money collected by the City from the motor vehicle fuels tax must be used for street repair and traffic safety; and

Whereas, the City of Portland has decided to refer a measure to the voters at the May 17, 2016 election, which if approved would require the Council to amend the City of Portland Code to create a program dedicated to street repair and traffic safety through a temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax. The proposed code amendments are Exhibit A.1.

NOW THEREFORE BE IT RESOLVED that the Council submits an Act, attached hereto as Exhibit A, entitled: "A Measure, amending the City of Portland Code, Title 17 by ordinance, by adding Chapter 17.105, included as Exhibit A.1 to provide for the creation of a program dedicated to street repair and traffic safety through a temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax" to the legal voters of the City of Portland, Oregon for adoption or rejection at the election in the City of Portland, Multnomah County, Clackamas County, and Washington County to be held on May 17, 2016. Each voter who votes upon said proposed measure shall vote "yes" or "no" in the space indicated for such vote on the City ballot at said election; and

BE IT FURTHER RESOLVED that a Citizen Oversight Committee (Exhibit E) will be appointed to review revenues, expenditures and the implementation of the Street Repair and Traffic Safety Program and ensure the program's accountability; and

BE IT FURTHER RESOLVED, the funds collected from the motor vehicle fuels tax, which are estimated to be \$64 million over four years, shall be used for the purposes of Street Repair and Traffic Safety. The projects to be completed with the funds are identified in the project list (Exhibit D) and any changes to this list will be reviewed by the Citizen Oversight Committee. If revenue or expenditure amounts differ from projections, the ratio of street repair to safety projects will remain the same (56% street repair to 44% safety projects); and

BE IT FURTHER RESOLVED that the City will annually audit the Street Repair and Traffic Safety Program and share the audit with the Citizen Oversight Committee and the public; and

BE IT FURTHER RESOLVED that PBOT will staff a subcommittee of the Portland Freight Committee to continue to research other potential mechanisms for generating revenue from heavy weight vehicles that currently pay weight-mile taxes; and

BE IT FURTHER RESOLVED that the Council submits the ballot title for the May 17, 2016 election ballot, as shown in the attached Exhibit B; and

BE IT FURTHER RESOLVED that the Council directs the Auditor to publish the ballot title as shown in Exhibit B in accordance with City Code; and

BE IT FURTHER RESOLVED that the Council directs the Auditor to submit the explanatory statement attached as Exhibit C to the Multnomah, Clackamas and Washington County elections offices for publication in each County's voters' pamphlet; and

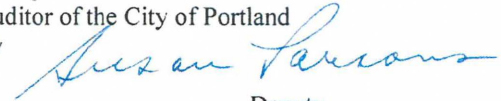
BE IT FURTHER RESOLVED that the City Auditor is directed to forward to Multnomah, Clackamas and Washington County Elections offices all materials necessary to place this measure on the May 17, 2016 Election ballot.

Adopted by the Council, JAN 27 2016

Commissioner Steve Novick
Prepared by: Mark Lear:sld
Date Prepared: January 14, 2016

Mary Hull Caballero
Auditor of the City of Portland

By



Deputy

Agenda No. **371 85** As Amended
RESOLUTION NO.
 Title

Refer a measure to City voters for the May 17, 2016 election authorizing the creation of a program dedicated to street repair and traffic safety through a temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax and create City Code 17.105 (Resolution)

INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK	CLERK USE: DATE FILED <u>JAN 19 2016</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick <i>[Signature]</i>	Mary Hull Caballero Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: Transportation <i>1/14/16</i> LEAH TREAT, DIRECTOR <i>[Signature] on behalf of Dir. Treat</i> Prepared by: Mark Lear:SC:slg Date Prepared: January 14, 2016	ACTION TAKEN:
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances <i>Tori</i>	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i>	
Council Meeting Date January 27, 2016	

AGENDA

TIME CERTAIN
Start time: 2:00 PM

Total amount of time needed: 3 Hours
 (for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: _____
 (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	

EXHIBIT B – Ballot Title**BALLOT TITLE FOR VOTERS' PAMPHLET****CAPTION (up to 10 words):**

Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety

QUESTION (up to 20 words):

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BALLOT SUMMARY (up to 175 words):

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- Intersection safety improvements, (\$3.4 million) - focused on improving access to transit: NE MLK, US 30

Citizen oversight committee reviews expenditures, provides annual reports. Audits required.

EXHIBIT A - ACT

AN ACT

A Measure, amending the City of Portland Code, Title 17 by ordinance, by adding Chapter 17.105, included as Exhibit A.1 to provide for the creation of a program dedicated to street repair and traffic safety through a temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PORTLAND, OREGON

The City of Portland ordains:

- Section 1: Title 17 is hereby amended by the changes attached as Exhibit A.1
- Section 2: If any part of this ordinance or any tax against any individual is found unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity will affect only that part of this Section or tax and will not affect or impair any other provision of the tax or Section.
- Section 3: This ordinance and the Code amendments attached as Exhibit A.1 shall be in full force and effect upon enactment by City of Portland voters at the election called for May 17th, 2016.

Exhibit A.1 – City of Portland Code Chapter 17.105

Portland City Code Title 17 Public Improvements

Chapter 17.105 Motor Vehicle Fuel Tax

- 17.105.010 Tax Imposed
- 17.105.015 Temporary Tax of Four Years
- 17.105.020 Use of Tax Revenues
- 17.105.025 Definitions
- 17.105.030 License Requirements
- 17.105.035 License Applications and Issuance
- 17.105.040 Failure to Secure License
- 17.105.045 Amount and Payment of Tax
- 17.105.050 Revocation of License
- 17.105.055 Cancellation of License
- 17.105.060 Remedies Cumulative
- 17.105.065 Billing Purchasers
- 17.105.070 Failure to Provide Invoice or Delivery Tag
- 17.105.075 Transporting Motor Vehicle Fuel in Bulk
- 17.105.080 Exemption of Weight Receipt Holders
- 17.105.085 Exemption of Export Fuel
- 17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers
- 17.105.095 Payment of Tax and Delinquency
- 17.105.100 Monthly Statement of Dealer or Seller
- 17.105.105 Failure to File Monthly Statement
- 17.105.106 Refunds
- 17.105.110 Examinations and Investigations
- 17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax
- 17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel
- 17.105.125 Records to be Kept by Dealer and Seller
- 17.105.130 Records to be Kept Three Years
- 17.105.135 Citizen Oversight Committee; Annual Audits
- 17.105.140 Tax Effective If Passed
- 17.105.145 Administrative Rules

17.105.010 Tax Imposed.

A Motor Vehicle Fuel Tax is hereby imposed on every Dealer or Seller. The tax imposed shall be paid monthly to the City. The Tax Administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the Motor Vehicle Fuel Tax, including all powers specified in ORS 319.010 to 319.430, and ORS 310.510 to 310.990.

17.105.015 Temporary Tax of Four Years.

This Chapter will be in full force and effect upon enactment. The Motor Vehicle Fuel Tax

established in Section 17.105.045 shall be imposed beginning on the tax implementation date established by the Tax Administrator and shall sunset four years after the tax implementation date. The tax implementation date shall not be earlier than September 1, 2016. The Tax Administrator is authorized to collect amounts receivable under this Chapter for taxes and penalties accrued prior to the termination of the Motor Vehicle Fuel Tax.

17.105.020 Use of Tax Revenues.

- A. For the purpose of this Section, Motor Vehicles Fuel Tax net revenues means the revenue from the tax and penalties imposed by this Chapter remaining after interest, collection, administrative, other costs, refunds, and credits are deducted from Motor Vehicle Fuel Tax revenues.
- B. The City shall use Motor Vehicles Fuel Tax net revenues only for construction, reconstruction, improvement, repair, maintenance, operation and use of public Highways, roads and streets as described in the Oregon Constitution, Article IX, Section 3a.
- C. The type of projects to be completed will be those approved and undertaken out of the Street Repair and Traffic Safety Program, and will include but not be limited to projects in the following categories:
 - 1. Street Repair
 - 2. Safe Routes to Schools
 - 3. Sidewalk Completion
 - 4. High Crash Corridor Safety Improvements
 - 5. Reducing Bicycle/Car conflicts
 - 6. Intersection Safety Improvements

17.105.025 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and phrases shall mean:

- A. **City** means the City of Portland.
- B. **Dealer** means any Person who:
 - 1. Imports or causes to be imported Motor Vehicle Fuel for sale, use or Distribution in the city, but Dealer does not include any Person who imports into the city Motor Vehicle Fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a Dealer hereunder if that Dealer assumes liability for the payment of the applicable Motor Vehicle Fuel Tax to the City and Dealer does not include terminal storage facilities; or
 - 2. Produces, refines, manufactures or compounds Motor Vehicle Fuel in the city for use, Distribution or sale in the city; or
 - 3. Acquires in the city for sale, use or Distribution in the city Motor Vehicle Fuel with respect to which there has been no Motor Vehicle Fuel Tax previously incurred.
- C. **Distribution.** In addition to its ordinary meaning, the delivery of Motor Vehicle Fuel by a Dealer or Seller to any Service Station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which Motor Vehicle Fuel is withdrawn directly for sale or for delivery into the fuel tanks of Motor Vehicles whether or not the

Service Station, tank or storage facility is owned, operated or controlled by the Dealer or Seller.

- D. **Highway** means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.
- E. **Motor Vehicle** means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of Motor Vehicle Fuel.
- F. **Motor Vehicle Fuel** includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of Motor Vehicles, except gas, diesel, mogas, methanol or liquid, the chief use of which, as determined by the Tax Administrator, is for purposes other than the propulsion of Motor Vehicles upon the Highways.
- G. **Person** means any natural Person, association, firm, partnership, corporation, joint venture or other business entity.
- H. **Seller means**
 - 1. A person that sells Motor Vehicle Fuel to a user of vehicles; or
 - 2. If the Motor Vehicle Fuel is dispensed at a non-retail facility, the person that owns the users accounts and bills the users for Motor Vehicle Fuel purchased at a non-retail facility.
- I. **Service Station** means any place operated for the purpose of retailing and delivering Motor Vehicle Fuel into the fuel tanks of Motor Vehicles.
- J. **Street Repair and Traffic Safety Program** means the City of Portland program in the Transportation Operating Fund where Motor Vehicle Fuel Tax net revenue pursuant to this chapter is deposited and street repair and traffic safety expenditures are recorded.
- K. **Terminal Storage Facility** means any fuel storage facility that has marine or pipeline access.
- L. **Tax Administrator** means the City Council, the City Council's designees, or any Person or entity with whom the City Council contracts to implement the Motor Vehicle Fuel Tax program or a portion thereof.
- M. **Weight Receipt** means a receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

17.105.030 License Requirements.

No Dealer or Seller shall sell, use, or distribute any Motor Vehicle Fuel until he/she has secured a Dealer's or Seller's license as required herein.

17.105.035 License Applications and Issuance.

- A. Every Person, who is a Dealer or Seller of Motor Vehicle Fuel in the City of Portland, shall make application to the Tax Administrator for a license authorizing such Person to engage in business as a Dealer or Seller in the City of Portland.
- B. Applications for the license shall be made on forms prescribed by the Tax Administrator.
- C. Applications shall include, among other items as may be required by the Tax Administrator:
 - 1. The business name under which the applicant transacts business.

2. The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.
 3. The name and address of the managing agent, the names and addresses of the several Persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. If an application for a Motor Vehicle Fuel Dealer's license or Seller's license is complete and accepted for filing, the Tax Administrator shall issue to the Dealer or Seller a license in such form as the Tax Administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the Dealer or Seller in whose name it is issued.
- E. The Tax Administrator shall retain all completed applications together with a record of all licensed Dealers and Sellers.

17.105.040 Failure to Secure License.

- A. If a Dealer or Seller sells, distributes, or uses any Motor Vehicle Fuel without first filing the application and obtaining the license required by Section 17.105.035, the Motor Vehicle Fuel Tax on all Motor Vehicle Fuel sold, distributed or used by that Dealer or Seller shall be immediately due and payable.
- B. The Tax Administrator shall determine, from as many available sources as the Tax Administrator determines reasonable, the amount of tax due, shall assess the Dealer or Seller for the tax due together with a penalty of 100 percent of the tax. In any suit or proceeding to collect the tax or penalty or both, the assessment shall be prima facie evidence that the Dealer or Seller therein named is indebted to the City in the amount of the tax and penalty stated.
- C. Any tax or penalty assessed pursuant to this Section may be collected in the manner prescribed in Section 17.105.095 with reference to delinquency in payment of the fee or by an action at law.
- D. In the event any suit or action is instituted to enforce this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

17.105.045 Amount and Payment of Tax.

In addition to any fees or taxes otherwise provided for by law, every Dealer or Seller engaging in the city in the sale, use or Distribution of Motor Vehicle Fuel shall:

- A. Not later than the 25th day of each calendar month, submit a report to the Tax Administrator on forms prescribed by the Tax Administrator of all Motor Vehicle Fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or Distribution the Dealer or Seller has assumed liability for the applicable Motor Vehicle Fuel Tax during

the preceding calendar month.

- B. Pay a Motor Vehicle Fuel Tax computed on the basis of ten cents per gallon of such Motor Vehicle Fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this Code or Administrative Rules promulgated in accordance with this Chapter.

17.105.050 Revocation of License.

- A. The Tax Administrator may revoke the license of any Dealer or Seller who fails to comply with any provision of this Chapter. The Tax Administrator shall mail, by certified mail addressed to the Dealer or Seller at his/her last known address appearing in the files of the Tax Administrator, a notice of intent to revoke. The notice of revocation shall provide the reason(s) for revocation which include, but are not limited to, failure to register for a license, failure to remit the tax, failure to file required reports or any information as required by the Tax Administrator, or failure to pay any penalty or interest assessments.
- B. A Dealer or Seller has the right to protest a notice of revocation to the Tax Administrator in writing within fourteen (14) days. The Tax Administrator must forward the appeal, including the reasons for the determination, to the Business License Appeals Board within 30 days. The Tax Administrator may prescribe by Administrative Rule procedures for the protest and appeal of license revocations. The license revocation shall become effective when the local protest and appeal process provided in Administrative Rules is completed and a final decision has been issued.

17.105.055 Cancellation of License.

- A. The Tax Administrator may, upon written request of a Dealer or Seller, cancel a license issued to that Dealer or Seller. The Tax Administrator shall, upon approving the Dealer's or Seller's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.
- B. The Tax Administrator may, after 30 days' notice has been mailed to the last known address of the Dealer or Seller, cancel the license of Dealer or Seller upon finding that the Dealer or Seller is no longer engaged in the business of a Dealer or Seller.

17.105.060 Remedies Cumulative.

Except as otherwise provided in Sections 17.105.095 and 17.105.105, the remedies provided in Sections 17.105.040, 17.105.050, and 17.105.055 are cumulative. No action taken pursuant to those sections shall relieve any Person from the penalty provisions of this Code.

17.105.065 Billing Purchasers.

Dealers in Motor Vehicle Fuel shall render bills to all purchasers of Motor Vehicle Fuel. The bills shall separately state and describe the different products sold or shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the Tax Administrator are maintained.

17.105.070 Failure to Provide Invoice or Delivery Tag.

No Person shall receive and accept Motor Vehicle Fuel from any Dealer, or pay for the same, or sell or offer the Motor Vehicle Fuel for sale, unless the Motor Vehicle Fuel is accompanied by an invoice or delivery tag showing the date upon which Motor Vehicle Fuel was delivered, purchased or sold and the name of the Dealer in Motor Vehicle Fuel.

17.105.075 Transporting Motor Vehicle Fuel in Bulk.

Every Person operating any conveyance for the purpose of hauling, transporting or delivering Motor Vehicle Fuel in bulk shall, before entering upon the public Highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such Motor Vehicle Fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The Person hauling such Motor Vehicle Fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

17.105.080 Exemption of Weight Receipt Holders.

Motor Vehicle Fuel sold to holders of a Weight Receipt shall not be charged the Motor Vehicle Fuel Tax.

17.105.085 Exemption of Export Fuel.

- A. The Motor Vehicle Fuel Tax imposed by Section 17.105.010 shall not be imposed on Motor Vehicle Fuel:
1. Exported from the city by a Dealer; or
 2. Sold by a Dealer for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a Motor Vehicle, but every Dealer shall be required to report such exports and sales to the city in such detail as may be required
- B. In support of any exemption from Motor Vehicle Fuel Taxes claimed under this Section other than in the case of stock transfers or deliveries in the Dealer's own equipment, every Dealer must execute and file with the Tax Administrator an export certificate in such form as shall be prescribed, prepared and furnished by the Tax Administrator, containing a statement, made by some Person having actual knowledge of the fact of such exportation, that the Motor Vehicle Fuel has been exported from the city, and giving such details with reference to such shipment as the Tax Administrator may require. The Tax Administrator may demand of any Dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The Tax Administrator may, in a case where the Tax Administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate. Any Motor Vehicle Fuel carried from the city in the fuel tank of a Motor Vehicle shall not be considered as exported from the city.
- C. No Person shall, through false statement, trick or device, or otherwise, obtain Motor Vehicle Fuel for export as to which the Motor Vehicle Fuel Tax has not been paid

and fail to export the same, or any portion thereof, or cause the Motor Vehicle Fuel or any portion thereof not to be exported, or divert or cause to be diverted the Motor Vehicle Fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the Tax Administrator and the Dealer from whom the Motor Vehicle Fuel was originally purchased of his/her act.

- D. No Dealer, or other Person shall conspire with any Person to withhold from export, or divert from export or to return Motor Vehicle Fuel to the city for sale or use so as to avoid any of the fees imposed herein.
- E. In support of any exemption from taxes on account of sales of Motor Vehicle Fuel for export by the purchaser, the Dealer shall retain in his/her files for at least three years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the Tax Administrator. This certificate shall be prima facie evidence of the exportation of the Motor Vehicle Fuel to which it applies only if accepted by the Dealer in good faith.

17.105.090 Exemption of Motor Vehicle Fuel Sold or Distributed to Dealers.

- A. Notwithstanding 17.105.095 of this Chapter, if the first sale, use or distribution of motor vehicle fuel is from one licensed Dealer to another licensed Dealer, the selling or distributing Dealer is not required to pay the Motor Vehicle Fuel Tax imposed in this Chapter. When the purchasing or receiving Dealer first sells, uses or distributes the fuel, that Dealer shall pay the Motor Vehicle Fuel Tax regardless of whether the sale, use or distribution is to another licensed Dealer.
- B. A Dealer who renders monthly statements to the Tax Administrator as required by this Chapter shall show separately the number of gallons of Motor Vehicle Fuel sold or delivered to Dealers.

17.105.095 Payment of Tax and Delinquency.

- A. The Motor Vehicle Fuel Tax imposed by this Chapter shall be paid to the Tax Administrator on or before the 25th day of each month.
- B. Except as provided in Subsections 17.105.095C. and E., if payment of the Motor Vehicle Fuel Tax is not paid as required by Subsection 17.105.095A., a penalty of 1 percent of such tax shall be assessed and be immediately due and payable.
- C. Except as provided in Subsection 17.105.095E., if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in Subsection 17.105.095B. and shall be immediately due and payable.
- D. If the Motor Vehicle Fuel Tax imposed by this Chapter is not paid as required by Subsection 17.105.095A., interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.
- E. Penalties imposed by this Section shall not apply if a penalty has been assessed and paid pursuant to Section 17.105.040. The Tax Administrator may for good cause shown waive any penalties assessed under this Section.
- F. If any Person fails to pay the Motor Vehicle Fuel Tax, interest, or any penalty

provided for by this Section, the Tax Administrator shall commence and prosecute in any court of competent jurisdiction an action at law to collect the amounts due. Such action may be taken on the sole authority of the Tax Administrator.

- G. In the event any suit or action is instituted to collect the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

17.105.100 Monthly Statement of Dealer or Seller.

Every Dealer or Seller in Motor Vehicle Fuel shall provide to the Tax Administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the Tax Administrator, a statement of the number of gallons of Motor Vehicle Fuel sold, distributed or used by the Dealer or Seller during the preceding calendar month. The statement shall be signed by the Dealer or Seller or the Dealer's or Seller's agent.

17.105.105 Failure to File Monthly Statement.

If a Dealer or Seller fails to file any statement required by Section, the Tax Administrator shall determine from as many available sources as the Tax Administrator determines reasonable the amount of Motor Vehicle Fuel sold, distributed or used by such Dealer or Seller for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The Tax Administrator shall assess the Dealer or Seller for the Motor Vehicle Fuel Tax upon the amount determined, adding a penalty of 10 percent of the tax for non-reporting. The penalty shall be cumulative to other penalties provided in this Code.

17.105.106 Refunds.

Refunds on the Motor Vehicle Fuel Tax will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280, 319.320, and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office

17.105.110 Examinations and Investigations

The Tax Administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of Dealers, Sellers, Service Stations and other Persons engaged in storing, selling or distributing Motor Vehicle Fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of this Chapter. If the examinations or investigations disclose that any reports of Dealers, Sellers, or other Persons filed with the Tax Administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of Motor Vehicle Fuel distributed or the tax accruing thereon, the Tax Administrator may make such changes in subsequent reports and payments of such Dealers, Sellers, or other Persons, or may make such refund or credit, as may be necessary

to correct the errors disclosed by its examinations or investigation. The Dealer or Seller shall reimburse the City for the reasonable costs of the examination or investigation if the action discloses that the Dealer or Seller paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

- A. Except as otherwise provided in this Code, any credit for erroneous overpayment of tax made by a Dealer or Seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a Dealer or Seller must be taken or filed within three years after the date on which the overpayment was made to the City.
- B. Except in the case of a fraudulent report or failure to make a report, every notice of additional tax proposed to be assessed under this Code shall be served on Dealers and Sellers within three years from the date upon which such additional taxes become due or were paid, whichever is later, and shall be subject to penalty as provided in Section 17.105.095.
- C. In the case of the filing of a false or fraudulent report, a failure to file a required report, or willful refusal to remit the tax, an assessment may be made, or a proceeding for the collection of such assessment may be commenced, at any time.

17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel.

The Tax Administrator or duly authorized agents of the Tax Administrator may at any time during normal business hours examine the books and accounts of any carrier of Motor Vehicle Fuel operating within the city for the purpose of enforcing the provisions of this Code.

17.105.125 Records to be Kept by Dealers and Sellers.

Every Dealer and Seller in Motor Vehicle Fuel shall keep a record in such form as may be prescribed or approved by the Tax Administrator of all purchases, receipts, sales and Distribution of Motor Vehicle Fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the Tax Administrator or authorized officers or agents of the Tax Administrator.

17.105.130 Records to be Kept Three Years.

Every Dealer and Seller shall maintain and keep, for a period of three years and six months, all records of Motor Vehicle Fuel used, sold and distributed within the city by such Dealer or Seller, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the Tax Administrator. In the event such records

are not kept within the state of Oregon, the Dealer or Seller shall reimburse the Tax Administrator for all travel, lodging, and related expenses incurred by the Tax Administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 17.105.010.

17.105.135 Citizen Oversight Committee; Annual Audits.

- A. The City will appoint a citizen oversight committee that is representative of the city's diverse communities to ensure the Motor Vehicle Fuel Tax is being implemented as required, to monitor revenues and review expenditures made, and to report their findings in a public record to the City Council on an annual basis. The committee will be comprised of a minimum of 8 and a maximum of 20 members.
- B. The use of Motor Vehicle Fuel Tax net revenues will be audited annually.

17.105.140 Chapter Effective If Passed.

Chapter 17.105 of this Code does not take effect unless Measure XXX is approved by the people according to elections results for the election held in the city on May 17, 2016.

17.105.145 Administrative Rules

The Tax Administrator has authority to promulgate administrative rules in accordance with this Chapter which shall have the same force and effect as any other provision of Chapter 17.105.

EXHIBIT C

EXPLANATORY STATEMENT FOR VOTERS' PAMPHLET (up to 500 words)

Measure creates program dedicated to street repair, traffic safety through temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax, estimated to raise \$64 million over four years. Tax implemented no earlier than September 2016, expires in four years. Establishes license requirements.

Project categories with examples in each category:

- Street repair, (\$35.8 million) - Parts of SE Foster, N Denver, NE Alberta
- Safe Routes to School, (\$8.8 million) – Lent Elementary traffic calming, David Douglas HS sidewalks, George Middle School crossings
- Sidewalk completion, (\$6.4 million) – SW Capitol Highway, NE 14th
- High Crash Corridor safety improvements, (\$3.9 million) - lighting on SE Powell, crosswalk improvements on NE Sandy, 82nd Avenue, SW Beaverton/Hillsdale Highway
- Reducing bicycle / car conflicts, (\$5.6 million) – two Neighborhood Greenways in East Portland, safer bicycle routes downtown
- Intersection safety improvements, (\$3.4 million) -- focused on improving access to transit: NE MLK, US 30

For a detailed list of projects, please visit portlandoregon.gov/transportation/betterstreets. If revenue or expenditure amounts differ from projections, the ratio of street repair to safety projects will remain the same (56% street repair to 44% safety projects).

For almost thirty years, Portland's streets have been deteriorating due to inadequate transportation funding. Every year, Portland's street maintenance backlog gets worse. Postponing repairs leads to worsening deterioration making future street repair more expensive. Street investments now save money later. Paving projects are selected using Portland's Pavement Management system and the project list shows examples of the projects that will be completed.

Working with neighborhoods and businesses, the City has developed plans for specific safety projects. These projects are designed to reduce crashes and fatalities, make it easier to cross streets to access transit, and improve safe access to parks and schools. Safety projects will be completed as listed. Any necessary refinements will be approved by a citizen oversight committee.

In their 2015 report, *Portland's Streets: Ending the funding gridlock*, the City Club identifies a local gas tax as a much needed, new funding source for transportation investments. The City Club's committee spent seven months studying options to fund

street maintenance and safety improvements. They concluded that delay is not a responsible option and a local gas tax should be part of the solution.

City General Funds, including property taxes, primarily support the City's Fire, Police and Parks Bureaus. Over the last ten years, transportation has received less than 2.5% of General Funds from the Adopted Budget. Historically, Portland relied on State and Federal fuel taxes for transportation funding, but the purchasing power of these taxes has diminished.

An oversight committee will review use of funds and report annually to City Council to ensure projects funded through this tax are consistent with voter intent.

The City will annually audit the Street Repair and Traffic Safety Program. This audit will be shared with the oversight committee and the public.

Measure creates program dedicated to street repair, traffic safety through temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax, estimated to raise \$64 million over four years. Tax implemented no earlier than September 2016, expires in four years. Establishes license requirements.

Project categories with examples in each category:

- Street Repair, (\$35.8 million) - Parts of SE Foster, N Denver, NE Alberta
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For a detailed list of projects, please visit [portlandoregon.gov/transportation/better streets](http://portlandoregon.gov/transportation/better-streets). If revenue or expenditure amounts differ from projections, the ratio of street repair to safety projects will remain the same (56% street repair to 44% safety projects).

Notice of Measure Election City

SEL 802rev 01/16 ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465**Notice****Date of Notice**

3/14/2016

Name of City or Cities

City of Portland

Date of Election

05/17/2016

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

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.

Name

Deborah Scroggin

Title

City Elections Officer

Mailing Address

1221 SW 4th Ave. Rm 320 Portland, OR 97204

Contact Phone

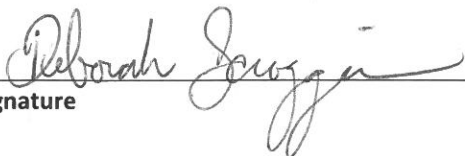
503-823-3546

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

3/14/16

CAPTION

Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic Safety.

QUESTION

Shall Portland adopt four year, 10 cents per gallon fuel tax dedicated to street repair, safety (including safer crossings, sidewalks)?

SUMMARY

Measure creates program dedicated to street repair, traffic safety through temporary, ten-cents per gallon tax on motor vehicle fuels in Portland for vehicles not subject to weight-mile tax, estimated to raise \$64 million over four years. Tax implemented no earlier than September 2016, expires in four years. Establishes license requirements.

Project categories with examples in each category:

- Street repair, (\$35.8 million) - Parts of SE Foster, N Denver, NE Alberta
- Safe Routes to School, (\$8.8 million) – Lent Elementary traffic calming, David Douglas HS sidewalks, George Middle School crossings
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- Reducing bicycle / car conflicts, (\$5.6 million) – two Neighborhood Greenways in East Portland, safer bicycle routes downtown
- Intersection safety improvements, (\$3.4 million) - focused on improving access to transit: NE MLK, US 30

Citizen oversight committee reviews expenditures, provides annual reports. Audits required.

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

PAUL ROMAIN,

Petitioner,

v.

THE CITY COUNCIL FOR THE CITY OF
PORTLAND, OREGON, and TRACY
REEVE, City Attorney for the City of
Portland, Oregon,

Respondents,

Case No. 16CV03531

STIPULATED ORDER

This matter came before the Court on March 3, 2016, on a "Petition To Challenge
Ballot Title and Explanatory Statement of City Measure" filed by Paul Romain pursuant to
ORS 250.296 and Section 2.04.070 of the Portland City Code directed to the Ballot Title and
Explanatory Statement prepared by respondent following adoption of City Council
Resolution No. 37185 on January 27, 2016. Petitioner Paul Romain appeared for himself and
through his attorney Margaret E. Schroeder. Respondent City Council for the City of
Portland, Oregon, and Tracy Reeve, City Attorney for the City of Portland, appeared through
their attorneys Linly F. Rees and Kenneth A. McGair, Sr. Deputy City Attorneys. The Court
reviewed the memoranda filed by the parties and heard statements of counsel. Now, being
fully advised,

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1 IT IS HEREBY ORDERED that the following ballot title adopted following City
2 Council Resolution No. 37185 is hereby certified to the elections officer for the City of
3 Portland:

4 CAPTION

5 Temporary Motor Vehicle Fuel Tax for Street Repair, Traffic
6 Safety.

7 QUESTION

8 Shall Portland adopt four year, 10 cents per gallon fuel tax
9 dedicated to street repair, safety (including safer crossings,
10 sidewalks)?

11 SUMMARY

12 Measure creates program dedicated to street repair, traffic
13 safety through temporary, ten-cents per gallon tax on motor
14 vehicle fuels in Portland for vehicles not subject to weight-mile
15 tax, estimated to raise \$64 million over four years. Tax
16 implemented no earlier than September 2016, expires in four
17 years. Establishes license requirements.

18 Project categories with examples in each category:

- 19 • Street repair, (\$35.8 million) - Parts of SE Foster, N
20 Denver, NE Alberta
- 21 • Safe Routes to School, (\$8.8 million) – Lent Elementary
22 traffic calming, David Douglas HS sidewalks, George
23 Middle School crossings
- 24 • Sidewalk completion, (\$6.4 million) – SW Capitol
25 Highway, NE 14th
- 26 • High Crash Corridor safety improvements, (\$3.9 million) -
lighting on SE Powell, crosswalk improvements on NE
Sandy, 82nd Avenue, SW Beaverton/Hillsdale Highway
- Reducing bicycle / car conflicts, (\$5.6 million) – two
Neighborhood Greenways in East Portland, safer bicycle
routes downtown
- Intersection safety improvements, (\$3.4 million) - focused
on improving access to transit: NE MLK, US 30

Citizen oversight committee reviews expenditures, provides
annual reports. Audits required.

1 IT IS FURTHER ORDERED that Petitioner's request that Respondents are enjoined
2 from submitting the explanatory statement adopted following City Council Resolution No.
3 37185 is DENIED:

4 IT IS FURTHER ORDERED that the following explanatory statement adopted
5 following City Council Resolution No. 37185 is hereby certified, as amended, to the
6 elections officer for the City of Portland:

7 Measure creates program dedicated to street repair, traffic
8 safety through temporary, ten-cents per gallon tax on motor
9 vehicle fuels in Portland for vehicles not subject to weight-mile
10 tax, estimated to raise \$64 million over four years. Tax
11 implemented no earlier than September 2016, expires in four
12 years. Establishes license requirements.

13 Project categories with examples in each category:

- 14 • Street Repair, (\$35.8 million) - Parts of SE Foster, N
15 Denver, NE Alberta
- 16 • Safe Routes to School, (\$8.8 million) – Lent Elementary
17 traffic calming, David Douglas HS sidewalks, George
18 Middle School crossings
- 19 • Sidewalk completion, (\$6.4 million) – SW Capitol
20 Highway, NE 14th
- 21 • High Crash Corridor safety improvements, (\$3.9 million) -
22 lighting on SE Powell, crosswalk improvements on NE
23 Sandy, 82nd Avenue, SW Beaverton/Hillsdale Highway
- 24 • Reducing bicycle / car conflicts, (\$5.6 million) – two
25 Neighborhood Greenways in East Portland, safer bicycle
26 routes downtown
- Intersection safety improvements, (\$3.4 million) -- focused
on improving access to transit: NE MLK, US 30

For a detailed list of projects, please visit
portlandoregon.gov/transportation/better streets. If revenue or
expenditure amounts differ from projections, the ratio of street
repair to safety projects will remain the same (56% street repair
to 44% safety projects).

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For almost thirty years, Portland's streets have been deteriorating due to inadequate transportation funding. Every year, Portland's street maintenance backlog gets worse. Postponing repairs leads to worsening deterioration making future street repair more expensive. Paving projects are selected using Portland's Pavement Management system and the project list shows examples of the projects that will be completed.

Working with neighborhoods and businesses, the City has developed plans for specific safety projects. These projects are designed to reduce crashes and fatalities, make it easier to cross streets to access transit, and improve safe access to parks and schools. Safety projects will be completed as listed. Any necessary refinements will be approved by a citizen oversight committee.

In their 2015 report, *Portland's Streets: Ending the funding gridlock*, the City Club identifies a local gas tax as a much needed, new funding source for transportation investments. The City Club's committee spent seven months studying options to fund street maintenance and safety improvements. They concluded that delay is not a responsible option and a local gas tax should be part of the solution.

City General Funds, including property taxes, primarily support the City's Fire, Police and Parks Bureaus. Over the last ten years, transportation has received less than 2.5% of General Funds from the Adopted Budget. Historically, Portland relied on State and Federal fuel taxes for transportation funding, but the purchasing power of these taxes has diminished.

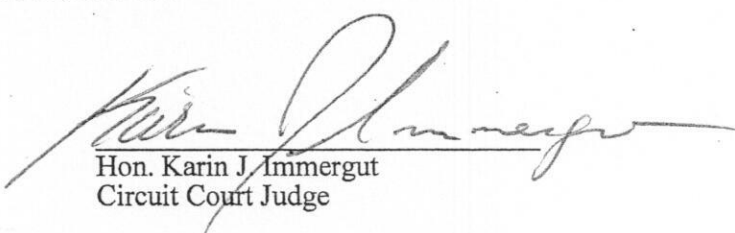
An oversight committee will review use of funds and report annually to City Council to ensure projects funded through this tax are consistent with voter intent.

The City will annually audit the Street Repair and Traffic Safety Program. This audit will be shared with the oversight committee and the public.

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1 IT IS FURTHER ORDERED that no costs or disbursements or attorneys' fees will be
2 assessed against any party.

3
4 DATED: 3/8/16

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7 
8 Hon. Karin J. Immergut
9 Circuit Court Judge

10 Presented by:

11 /s/ Linly F. Rees
12 Linly F. Rees, OSB #945098
13 Sr. Deputy City Attorney
14 Email: linly.rees@portlandoregon.gov
15 Of Attorneys for Respondent

16 It is stipulated and agreed:

17 /s/ Margaret E. Schroeder
18 Margaret E. Schroeder, OSB #025748
19 BLACK HELTERLINE, LLP
20 Email: mes@bhlaw.com
21 Of Attorneys for Petitioner

22 It is stipulated and agreed:

23 /s/ Paul R. Romain
24 Paul R. Romain, OSB #732565
25 THE ROMAIN GROUP, LLC
26 Email: promain@theromaingroup.com
Of Attorneys for Petitioner

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c. After conferring about objections, Margaret E Schroeder, Attorney for Plaintiff, agreed to independently file any remaining objections.

4. The relief sought is against an opposing party who has been found in default.

5. An order of default is being requested with this proposed judgment.

6. Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.

7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

DATED: March 7, 2016

/s/ Linly F. Rees

LINLY F. REES OSB #945098

Senior Deputy City Attorney

Email: linly.rees@portlandoregon.gov

Fax: (503) 823-3089

Of Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing STIPULATED ORDER on:

Margaret E Schroeder
Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, OR 97205
Of Attorneys for Petitioner

Paul R. Romain
707 SW Washington Street, Suite 927
Portland, OR 97201
Of Attorneys for Petitioner

on March 7, 2016, by causing a full, true and correct copy thereof, addressed to the last-known address (or fax number) of said attorney, to be sent by the following method(s):

- by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- by **hand delivery**.
- by **facsimile transmission**.
- by **email**.

/s/ Linly F. Rees

LINLY F. REES OSB #945098
Senior Deputy City Attorney
Email: linly.rees@portlandoregon.gov
Fax: (503) 823-3089
Of Attorneys for Respondent