

2012 City-Referred Measure Log

Measure 26-146

Ballot Title Caption: Restore School Arts, Music Education; Fund Arts through Limited Tax.

On June 27, 2012, the Portland City Council adopted Resolution 36939, referring a measure to Portland voters at the November 6, 2012 General Election ballot.

Resolution [36939](#) - (PDF Document, 740 kb)

[Exhibit A](#) - Measure Act

[Exhibit B](#) - Ballot Title

[Exhibit C](#) – Costs

[Exhibit D](#) - Intergovernmental Agreement Between School District and the City of Portland

[Notice of City Measure Election \(form SEL 802\)](#)

[Measure Explanatory Statement \(form MCED 014\)](#)

BALLOT TITLE

CAPTION

Restore School Arts, Music Education; Fund Arts through Limited Tax.

QUESTION

Shall Portland restore arts, music for schools and fund arts through income tax of 35 dollars per year?

STATEMENT

This measure creates a limited income tax of \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

Accountability measures include:

- Administrative costs are capped.
- Expenditures subject to oversight by citizen committee.
- Independent financial audits of RACC and School District expenditures.

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due.

Status:

6/27/2012 - Resolution 36939 adopted by Council; Seven-day ballot title challenge period begins; 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. Monday, July 10, 2012.

7/10/2012 - [Ballot title challenge filed](#) in the Multnomah County Circuit Court.

7/10/2012 - Second [ballot title challenge filed](#) in the Multnomah County Circuit Court.

8/14/2012 - Judge Wittmayer issues [ruling](#) on ballot title challenges.

8/29/2012 - Auditor files Notice of City Measure Election with Multnomah County Elections

8/29/2012- Auditor files Measure Explanatory Statement with Multnomah County Elections

8/29/2012 - Multnomah County Elections confirms measure number and receipt of Notice of City Measure Election

8/29/2012 - Multnomah County Elections confirms receipt of Measure Explanatory Statement

11/6/12 - Voters [approve](#) measure

2012 General Election Official Results

NOVEMBER 6, 2012 GENERAL ELECTION OFFICIAL RESULTS					
CITY MEASURES					
<u>Measure 26-145</u>	Multnomah	Clackamas	Washington	Total	%
Yes	185,463	263	411	186,137	73.84%
No	65,626	105	197	65,928	26.16%
TOTAL	251,089	368	608	252,065	100.00%
<u>Measure 26-146</u>	Multnomah	Clackamas	Washington	Total	%
Yes	178,725	200	445	179,370	62.33%
No	107,953	218	256	108,427	37.67%
TOTAL	286,678	418	701	287,797	100.00%

Measure 26-145

Ballot Title Caption: Amends Charter: Changes provisions of Fire Police

Disability Retirement System

On August 8, 2012, the Portland City Council adopted Resolution 36948, referring a charter amendment measure to Portland voters at the November 6, 2012 General Election ballot.

[Resolution 36948](#) - (PDF Document, 740 kb)

[Exhibit A - Measure Act](#) (PDF Document, 84 kb)

[Exhibit B - Ballot Title](#) (PDF Document, 56 kb)

[Exhibit C – Explanatory Statement](#) (PDF Document, 64 kb)

[Notice of City Measure Election \(form SEL 802\)](#)

[Measure Explanatory Statement \(form MCED 014\)](#)

BALLOT TITLE

CAPTION

AMENDS CHARTER: CHANGES PROVISIONS OF FIRE POLICE DISABILITY RETIREMENT SYSTEM.

QUESTION

Shall limited provisions of the retirement and disability system for police and fire be changed?

SUMMARY

This measure would amend the City Charter for the Fire Police Disability Retirement System (FPDR) by:

- Clarifying the calculation of retirement benefits to include only pay a member received in the year preceding retirement.
- Changing eligibility for disability benefits for new members after completion of six consecutive months of employment as a sworn employee.
- Changing the calculation of service credit to not include post-employment service by another employer.
- Giving the Administrator, with the approval of the Board of Trustees, authority to settle claims.
- Defining service requirements for occupational disability due to heart disease and nonservice-connected disability and death benefits.
- Changing retirement benefits for part-time employees.
- Providing disability benefits on a monthly or bi-weekly basis.

- Providing interim disability benefits during the period between the application and approval of benefits.
- Clarifying language regarding occupational disability benefits.
- Changing from 10 years to 5 years the vesting period for nonservice-connected death benefits.

This amendment is expected to decrease FPDR taxpayer liabilities by \$46 Million over a 25 year period.

Status:

8/8/2012 - Resolution 36948 adopted by Council; Seven-day ballot title challenge period begins; 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. Monday, August 20, 2012.

8/21/2012 - No ballot title challenges filed during challenge period

8/27/2012 - Auditor files Notice of City Measure Election with Multnomah County Elections

8/27/2012- Auditor files Measure Explanatory Statement with Multnomah County Elections

8/27/2012 - Multnomah County Elections confirms measure number and receipt of Notice of City Measure Election

8/27/2012 - Multnomah County Elections confirms receipt of Measure Explanatory Statement

11/6/12 - Voters [approve](#) measure

2012 General Election Official Results

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Yes	178,725	200	445	179,370	62.33%
No	107,953	218	256	108,427	37.67%
TOTAL	286,678	418	701	287,797	100.00%

Measure 26-145

RESOLUTION No. 3 6948 As Amended

Refer amendments to the City of Portland Charter, Chapter 5, Fire and Police Disability, Retirement and Death Benefit Plan to the November 2012 General Election Ballot (Resolution)

WHEREAS, the City of Portland acknowledges the extremely important work that police officers and firefighters do to keep our city and its residents safe; and

WHEREAS, the City of Portland affirms its commitment to provide both a fair and a reasonable retirement and disability system for its firefighters and police; and

WHEREAS, the City of Portland acknowledges the hard work of the Fire and Police Disability and Retirement Board (FPDR) of Trustees for recommending many of these changes to the City Council; and

WHEREAS, the City of Portland believes that these changes will continue to provide a fair and reasonable retirement and disability system for its firefighters and police, while being accountable to the taxpayer of Portland; and

WHEREAS, this measure clarifies how retirement benefits are calculated to ensure a member receives a pension that is based on the Final Pay a member received or was entitled to receive during the year preceding their retirement. Currently, the Charter is written to allow a member to receive a larger retirement benefit depending on when the member retires by including more than a typical year's worth of salary and including lump sum payments attributable to service from years prior to the year preceding retirement. This measure corrects that by clearly defining the pay that is included in the member's Final Pay at retirement; and

WHEREAS, this measure changes the eligibility period for new members by requiring six consecutive months of service as a sworn police officer or firefighter with the City of Portland prior to entering the FPDR system. Members would be covered by the state Workers' Compensation system during this six month waiting period; and

WHEREAS, for members in the FPDR retirement system, this measure removes from retirement calculations credit for employment by another entity in the Oregon Public Employees Retirement System (PERS). This ensures that retirement benefits will be calculated only based on service a member provides in the City of Portland and will not increase a member's FPDR pension based on service with another PERS employer; and

WHEREAS, this measure would give the FPDR Administrator the ability to settle claims with either the approval of the FPDR Board of Trustees or under guidelines established by the Board of Trustees; and

WHEREAS, this measure clarifies service requirements for nonservice connected disability and death benefits and occupational disability benefits due to heart disease; and

WHEREAS, this measure changes the retirement benefit calculation for part-time employees so that a member receives adequate credit and pay for part-time work when calculating their pension; and

WHEREAS, this measure allows members receiving disability payments to receive payments on either a bi-weekly or monthly basis depending on the duration of their disability; and

WHEREAS, this measure allows members to receive disability payments during the period their disability application is being processed and allows the FPDR to recoup the benefits paid should the claim be denied or withdrawn; and

WHEREAS, this measure clarifies language regarding occupational disability benefits; and

WHEREAS, this measure changes the vesting period for nonservice connected death benefits from 10 to 5 years.

WHEREAS, the FPDR system is funded by a property tax levy. This amendment is expected to decrease taxpayer funded liabilities by \$46.6 million in 2012 dollars over a 25 year period.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will submit a Measure for an Act, amending and restating the City of Portland Charter, Chapter 5, Fire and Police Disability, Retirement and Death Benefit Plan, attached as Exhibit A, to voters of the City of Portland at the November 6, 2012 General Election in the City of Portland, Multnomah County, Clackamas County and Washington County; and

BE IT FURTHER RESOLVED, that the City Council submits the question, ballot title, and summary to be contained in the November 6, 2012 General Election Ballot, as contained in Exhibit B; and

BE IT FURTHER RESOLVED, that the City 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 City Council directs the Auditor to submit an explanatory statement for the publication in the voters' pamphlet, as shown in Exhibit C; and

BE IT FURTHER RESOLVED, that the City Auditor is directed to forward to the County Elections Office all material necessary to place this measure on the November 6, 2012 Election Ballot.

Adopted by the Council: AUG 08 2012

Commissioner Dan Saltzman
Prepared by: S. Callahan
Date Prepared: July 25, 2012

LaVonne Griffin-Valade
Auditor of the City of Portland
By


Deputy

~~873~~ 886

Agenda No. **3 6948** As Amended
RESOLUTION NO.
Title

Refer amendments to the City of Portland Charter, Chapter 5, Fire and Police Disability, Retirement/ and Death Benefit Plan to the November 2012 General Election Ballot. (Resolution).

INTRODUCED BY Commissioner/Auditor: Saltzman	CLERK USE: DATE FILED <u>JUL 27 2012</u>
COMMISSIONER APPROVAL	LaVonne Griffin-Valade Auditor of the City of Portland
Mayor—Finance and Administration - Adams	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	By: <u>Susan Saccor</u> Deputy
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
BUREAU APPROVAL	ACTION TAKEN:
Bureau: FPD&R Bureau Head: Linda Jefferson <u>Linda Jefferson</u>	AUG 01 2012 RESCHEDULED TO AUG 08 2012 5:00 PM TIME CERTAIN
Prepared by: S. Callahan Date Prepared: July 25, 2012	
Financial Impact & Public Involvement 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"/>	
Council Meeting Date August 1st 10 AM Time Certain	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <u>JAM</u> <u>JUD</u>	

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: <u>10 AM</u>
Total amount of time needed: 30 minutes (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

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

MEASURE EXPLANATORY STATEMENT

Required for all Measures Submitted with Multnomah County Elections

ELECTION DATE November 6, 2012	MEASURE NUMBER	
BALLOT TITLE CAPTION AMENDS CHARTER: CHANGES PROVISIONS OF FIRE POLICE DISABILITY RETIREMENT SYSTEM		
NAME OF PERSON RESPONSIBLE FOR CONTENT OF STATEMENT Dan Saltzman, City of Portland Commissioner		
NAME OF JURISDICTION PERSON REPRESENTS City of Portland		
E-MAIL dan@portlandoregon.gov	TELEPHONE NUMBER 503-823-4151	FAX NUMBER 503-823-3036

Please use space below or attach text on a separate sheet of paper.

Please see attached.

WORD/NUMBER COUNT TOTAL (500 word/number limit) 431



SIGNATURE OF PERSON RESPONSIBLE FOR CONTENT OF STATEMENT

8/27/12
DATE

Please note new requirements in OAR 165-022-0040

Filing Explanatory Statements

(1) The governing body for any local government which has referred a measure to the voters, shall submit an impartial, simple and understandable statement explaining the measure and its effect.

(2) For any initiative or referendum by petition, an impartial, simple and understandable statement explaining the measure and its effect shall be submitted by the governing body of the local government only if the local government has an ordinance requiring the submission of such a statement.

(3) Explanatory statements shall be limited to 500 words.

(4) The county clerk shall reject any referred measure submitted without an explanatory statement

INSTRUCTIONS

1. The Explanatory Statement shall be an impartial, simple and understandable statement explaining the measure and its effect and must be typewritten.
2. The word count total must not exceed 500 words/numbers.
3. If the Explanatory Statement exceeds the 500 word/number limit, the county clerk shall end the statement at 500 words/numbers.
4. The Explanatory Statement shall include the name and signature of the person responsible for the content of the statement and the name of the governing body that person represents.
5. The Explanatory Statement shall be filed with the county clerk of the county in which the city hall of the city or the administrative office of the special district is located.
6. Explanatory Statements shall be filed not later than 5:00 p.m. on the deadline for filing a notice of measure election.
7. Pursuant to ORS 251.415 the county clerk shall reject any statement which:
 - a. Contains any obscene, profane or defamatory language;
 - b. Incites or advocates hatred, abuse or violence toward any person or group; or
 - c. Contains any language which may not legally be circulated through the mail.
8. The county clerk shall not correct spelling, grammar or punctuation errors. Statements will not be returned for proofreading.

If you have any questions, call the Multnomah County Elections Division at 503-988-3720.

Multnomah County Elections
1040 SE Morrison St.
Portland OR 97214-2495
www.mcelections.org

Ballot Title Caption:

AMENDS CHARTER: CHANGES PROVISIONS OF FIRE POLICE DISABILITY RETIREMENT SYSTEM.

EXPLANATORY STATEMENT

This measure would make changes to certain provisions of the Fire and Police Disability, Retirement and Death Benefit (FPDR) system in the Portland City Charter. The FPDR system is funded by a property tax levy. This amendment is expected to decrease taxpayer funded liabilities by \$46.6 million over a 25 year period.

This measure clarifies how retirement benefits are calculated to ensure a member receives a pension that is based on the Final Pay a member received or was entitled to receive during the year preceding their retirement. Currently, the Charter is written to allow a member to receive a larger retirement benefit depending on when the member retires by including more than a typical year's worth of salary and including lump sum payments attributable to service from years prior to the year preceding retirement. This measure corrects that by clearly defining the pay that is included in the member's Final Pay at retirement.

This measure changes the eligibility period for new members by requiring six consecutive months of service as a sworn police officer or firefighter with the City of Portland prior to entering the FPDR system. Members would be covered by the state Workers' Compensation system during this six month waiting period.

For members in the FPDR retirement system, this measure removes from retirement calculations credit for employment by another entity in the Oregon Public Employees Retirement System (PERS). This ensures that retirement benefits will be calculated only based on service a member provides in the City of Portland and will not increase a member's FPDR pension based on service with another PERS employer.

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This measure changes the retirement benefit calculation for part-time employees so that a member receives adequate credit and pay for part-time work when calculating their pension.

This measure allows members receiving disability payments to receive payments on either a bi-weekly or monthly basis depending on the duration of their disability.

This measure allows members to receive disability payments during the period their disability application is being processed and allows the FPDR to recoup the benefits paid should the claim be denied or withdrawn.

This measure clarifies language regarding occupational disability benefits.

This measure changes the vesting period for nonservice connected death benefits from 10 to 5 years.

Submitted by:

City of Portland City Council

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Adopted by the Council: AUG 08 2012

Commissioner Dan Saltzman
Prepared by: S. Callahan
Date Prepared: July 25, 2012

LaVonne Griffin-Valade
Auditor of the City of Portland
By


Deputy

~~873~~ 886

Agenda No. **3 6948** As Amended
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INTRODUCED BY Commissioner/Auditor: Saltzman	CLERK USE: DATE FILED <u>JUL 27 2012</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <u>Susan Saccor</u> Deputy
BUREAU APPROVAL Bureau: FPD&R Bureau Head: Linda Jefferson <u>Linda Jefferson</u> Prepared by: S. Callahan Date Prepared: July 25, 2012	ACTION TAKEN: AUG 01 2012 RESCHEDULED TO AUG 08 2012 5:00 PM TIME CERTAIN
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
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	YEAS	NAYS
1. Fritz	✓	
2. Fish	—	—
3. Saltzman	✓	
4. Leonard	—	—
Adams	✓	

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NAME OF PERSON RESPONSIBLE FOR CONTENT OF STATEMENT Dan Saltzman, City of Portland Commissioner		
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E-MAIL dan@portlandoregon.gov	TELEPHONE NUMBER 503-823-4151	FAX NUMBER 503-823-3036

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Ballot Title Caption:

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EXPLANATORY STATEMENT

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This measure clarifies language regarding occupational disability benefits.

This measure changes the vesting period for nonservice connected death benefits from 10 to 5 years.

Submitted by:

City of Portland City Council

Notice of City Measure Election

SEL 802

rev 1/12: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

City and Notice Information

Notice is hereby given on August 27, 2012, 2012, that a measure election will be held in

City of Portland

Oregon on November 6th

, 2012.

Name of City or Cities

Date of Election

The following shall be the ballot title of the measure to be submitted to the city's voters:

Caption 10 words

AMENDS CHARTER: CHANGES PROVISIONS OF FIRE POLICE DISABILITY RETIREMENT SYSTEM.

Question 20 words

Shall limited provisions of the retirement and disability system for police and fire be changed?

Summary 175 words

This measure would amend the City Charter for the Fire Police Disability Retirement System (FPDR) by:

- Clarifying the calculation of retirement benefits to include only pay a member received in the year preceding retirement.
- Changing eligibility for disability benefits for new members after completion of six consecutive months of employment as a sworn employee.
- Changing the calculation of service credit to not include post-employment service by another employer.
- Giving the Administrator, with the approval of the Board of Trustees, authority to settle claims.
- Defining service requirements for occupational disability due to heart disease and nonservice-connected disability and death benefits.
- Changing retirement benefits for part-time employees.
- Providing disability benefits on a monthly or bi-weekly basis.
- Providing interim disability benefits during the period between the application and approval of benefits.
- Clarifying language regarding occupational disability benefits.
- Changing from 10 years to 5 years the vesting period for nonservice-connected death benefits.

This amendment is expected to decrease FPDR taxpayer liabilities by \$46 Million over a 25 year period.

The following authorized city official hereby certifies the above ballot title is true and complete, which includes publication of notice and the completion of the ballot title challenge process.

Signature of Authorized City Official *not required to be notarized*

Date Signed 8/27/12 mm/dd/yy

Printed Name of Authorized City Official

Title

LaVonne Griffin-Valade
LaVonne Griffin-Valade

City Auditor

Notice of City Measure Election

SEL 802

rev 1/12: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

City and Notice Information

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Oregon on November 6th

, 2012.

Name of City or Cities

Date of Election

The following shall be the ballot title of the measure to be submitted to the city's voters:

Caption 10 words

AMENDS CHARTER: CHANGES PROVISIONS OF FIRE POLICE DISABILITY RETIREMENT SYSTEM.

Question 20 words

Shall limited provisions of the retirement and disability system for police and fire be changed?

Summary 175 words

This measure would amend the City Charter for the Fire Police Disability Retirement System (FPDR) by:

- Clarifying the calculation of retirement benefits to include only pay a member received in the year preceding retirement.
- Changing eligibility for disability benefits for new members after completion of six consecutive months of employment as a sworn employee.
- Changing the calculation of service credit to not include post-employment service by another employer.
- Giving the Administrator, with the approval of the Board of Trustees, authority to settle claims.
- Defining service requirements for occupational disability due to heart disease and nonservice-connected disability and death benefits.
- Changing retirement benefits for part-time employees.
- Providing disability benefits on a monthly or bi-weekly basis.
- Providing interim disability benefits during the period between the application and approval of benefits.
- Clarifying language regarding occupational disability benefits.
- Changing from 10 years to 5 years the vesting period for nonservice-connected death benefits.

This amendment is expected to decrease FPDR taxpayer liabilities by \$46 Million over a 25 year period.

The following authorized city official hereby certifies the above ballot title is true and complete, which includes publication of notice and the completion of the ballot title challenge process.

Signature of Authorized City Official *not required to be notarized*

8/27/12
Date Signed mm/dd/yy

LaVonne Griffin-Valade
Printed Name of Authorized City Official

City Auditor
Title

Measure 26-146

RESOLUTION No. 36939 As Amended

Refer Portland City Code Changes to Title 3 and Title 5 regarding arts education and access to City voters at the November 6, 2012, General Election ballot. (Resolution)

WHEREAS, arts and music are essential to a high quality, well-rounded education; and

WHEREAS, national research links access to arts and music education to improved test scores, graduation rates and college admittance – particularly for lower-income students and students at-risk. In 2010, 44% of Portland’s high school students did not graduate with their class; and

WHEREAS, non-profit arts and culture organizations play a key role in the education of our children, the economic vitality of our region, and the livability of our city; and

WHEREAS, budget cuts have resulted in a steep decline of arts and music education in Portland schools, leaving over 11,500 students in 26 schools with no access to certified instruction in art, music, dance or drama as of the most recent school year; and

WHEREAS, Portland schools have fallen behind with only 18% of our elementary schools offering art instruction (compared to 83% nationally) and only 58% of our elementary schools offering music (compared to 94% nationally); and

WHEREAS, cities with thriving arts and culture communities help attract businesses, develop a creative workforce and create economic development opportunities across multiple sectors; and

WHEREAS, this proposal will restore arts and music education to our schools by providing stable, long-term funding for certified arts and music teachers – ensuring access to the arts for Portland school students; and

WHEREAS, this proposal will provide grant funding to schools and to non-profit organizations that make arts and culture experiences widely available to school children and every Portland resident; and

WHEREAS, the residents of the City of Portland should be allowed to vote to approve the Arts Education and Access Fund.

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, Titles 3, Legislation and Election and Title 5, Revenue and Finance, by ordinance to provide for a limited income tax to support arts education and access to the arts” and Exhibit A.1., new provisions for City Code Sections 3.15.060, 5.04 and 5.73. Exhibit A, and attachments Exhibit A.1 are hereby submitted to the legal voters of the City of Portland, Oregon, for adoption or rejection at the General Election in the City of Portland, Multnomah County, Clackamas County and Washington County to be held on November 6, 2012; and

BE IT FURTHER RESOLVED that the Council submits the ballot title for the November 6, 2012 General Election ballot, as shown in the attached Exhibit B; and

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

BE IT FURTHER RESOLVED that a cap on the amount of start-up administrative expenses shall be imposed as shown in Exhibit C; and

BE IT FURTHER RESOLVED that the City will execute Intergovernmental Agreements (IGAs) with six school districts in a form similar to that shown in Exhibit D; and

BE IT FURTHER RESOLVED that the ballot measure shall either authorize a limited income tax for arts education and arts access or reject a limited income tax for such purposes. 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. A "yes" vote shall approve the limited income tax while a "no" vote shall reject a limited income tax; and

BE IT FURTHER RESOLVED that the Mayor may submit an explanatory statement to the City Auditor 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 November 6, 2012, General Election ballot.

Adopted by the Council: JUN 27 2012

Commissioner: Mayor Adams
Prepared by: Cary Clarke/cj
Date Prepared: June 21, 2012

LaVonne Griffin-Valade
Auditor of the City of Portland

By


Deputy

Refer Portland City Code Changes to Title 3 and Title 5 regarding arts education and access to City voters at the November 6, 2012, General Election ballot. (Resolution)

<p>INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams <i>[Signature]</i></p> <p>Position 1/Utilities – Fritz</p> <p>Position 2/Works – Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety – Leonard</p> <p>BUREAU APPROVAL</p> <p>Bureau: Mayor's Office Bureau Head: Mayor Adams</p> <p>Prepared by: J.H. Van Dyke Date Prepared: June 21, 2012</p> <p>Financial Impact & Public Involvement Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date June 27, 2012</p> <p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>[Signature]</i></p>	<p>CLERK USE: DATE FILED <u>JUN 22 2012</u></p> <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p> <p>ACTION TAKEN:</p>
---	---

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/> Start time: 2:45</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

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

EXHIBIT A

AN ACT

A Measure, amending the City of Portland Code, Titles 3, Legislation and Election and Title 5, Revenue and Finance, by ordinance to provide for a limited income tax to support arts education and access to the arts.

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

The City of Portland ordains:

Section 1: Title 3, Legislation and Elections, and Title 5, Revenue and Finance are 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 changes attached as Exhibit A.1 shall be in full force and effect upon enactment by City of Portland voters at the election called for November 6, 2012.

EXHIBIT A.1**Changes to City Code****1. City Code Section 3.15.060 is amended as follows:**

A. [1-5 no changes.]

- 6. Manage, enforce and collect the Arts Education and Access Income Tax.
- 67. Manage and enforce all regulatory programs formerly the responsibility of the Bureau of Licenses, including the authority to enact administrative rules and regulations.
- 78. Manage and collect assessments and liens formerly the responsibility of the Auditor's Office.
- 89. Perform business management functions including mail processing, receipting and distribution; and perform overall financial accounting of bureau revenues.
- 910. Audit functions including the Portland area business license tax returns, transient lodging taxes and internal systems and processes, as well as other special audits as deemed necessary.
- 1011. In consultation with the requesting bureau, recommend systems for new revenue or fee collection services.
- 1112. Manage funds as assigned.

B. [no changes.]

2. City Code Chapter 5.04 is amended by adding a new section as follows:**5.04.510 Arts Education and Access Fund**

The Arts Education and Access Fund is hereby created. The purpose of the Fund is to receive Gross Revenues received from the Arts Education and Access Income Tax and provide the Net Revenues to the School Districts and to the Regional Arts and Culture Council solely for the purposes established in Chapter 5.73 of this Code. In no case shall Net Revenues be transferred from the Arts Education and Access Fund to the City's General Fund, or any other fund, for any other purpose.

3. City Code Title 5 is amended by adding a new chapter as follows:

Chapter 5.73 Arts Education and Access Income Tax

- 5.73.010 Definitions.
- 5.73.020 Tax Imposed.
- 5.73.030 Net Revenues Distribution.
- 5.73.040 Intergovernmental Agreements.
- 5.73.050 Citizen Oversight Committee.
- 5.73.060 Audits.
- 5.73.070 Effective Dates.
- 5.73.080 Revenue Bureau Responsibilities.
- 5.73.090 Limitation on Costs.

5.73.010 Definitions.

For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A. "Catchment" means the geographical area from which an elementary school within a District draws its students.
- B. "Director" means the Director of the Revenue Bureau, or authorized designee.
- C. "Gross Revenues" means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.
- D. "Net Revenues" means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.
- E. "Portland K-5 Students" means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.
- F. "Resident" or "resident of the City" means:
 - 1. An individual who is domiciled in this City unless the individual:
 - a. Maintains no permanent place of abode in the City;
 - b. Does maintain a permanent place of abode elsewhere; and
 - c. Spends in the aggregate not more than 30 days in the taxable year in the City; or

2. An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this subsection, a fraction of a calendar day shall be counted as a whole day.
- G. “Resident” or “resident of the City” does not include:
1. An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
 2. A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
 3. A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.
- H. “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.
- I. “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

5.73.020 Tax Imposed.

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

5.73.030 Net Revenues Distribution.

Net Revenues will be paid by the Revenue Bureau to the Arts Education and Access Fund for distribution by the City as follows:

- A. First, funds shall be distributed to the School Districts for the purpose of hiring certified arts or music education teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no

distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:

1. Elementary schools within the School Districts that have no Portland K-5 students; and
 2. Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland's geographical boundaries.
- B. Any funds remaining after distribution to the School Districts shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:
1. Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in subsection 2 below.
 2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
 3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

5.73.050 Citizen Oversight Committee.

The City will appoint a citizen oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of five and a maximum of ten members, including, if possible, a member of the Tax Supervising and Conservation Commission.

5.73.060 Audits.

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

5.73.070 Effective Dates.

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

5.73.080 Revenue Bureau Responsibilities.

The Revenue Bureau shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;
- B. Keep accurate records of the funds;
- C. Report to the City Council by way of a public record on all funds received and directed to the School Districts and RACC;
- D. Adopt administrative rules necessary to implement tax collection and administration.
- E. If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and

- F. Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

- A. The Revenue Bureau's first year start-up costs are capped at \$500,000. Ongoing administrative costs are capped at an average 5 percent or less of Gross Revenues over a five year period.
- B. The City's contract amendment with RACC will require RACC to:
 - 1. Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;
 - 2. Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;
 - 3. Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;
 - 4. Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and
 - 5. Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.

EXHIBIT B

Ballot Title for Arts Education and Access Income Tax

CAPTION

Restore School Arts, Music Education; Fund Arts through Limited Tax (10 words)

QUESTION

Shall Portland restore arts, music for schools and fund arts through income tax capped at 35 dollars per year? (19 words)

SUMMARY

This measure creates a limited income tax capped at \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

Accountability measures include:

- Administrative costs are capped.
- Expenditures subject to oversight by citizen committee.
- Independent financial audits of RACC and School District expenditures.

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due. (164 words)

Exhibit C

First year start-up costs are capped at \$500,000 in the aggregate and are excluded from the computation of the 5% cap on administrative cost.

Examples of anticipated start-up costs:

Multiple informational mailings to all Portland households	\$395,000
Information technology (e.g. database, website, telephones)	<u>\$105,000</u>

Total	\$500,000
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EXHIBIT D**INTERGOVERNMENTAL AGREEMENT
BETWEEN _____ SCHOOL DISTRICT AND THE CITY OF PORTLAND FOR
ONE-TIME FUNDS AND ONGOING PARTNERSHIPS**

This Intergovernmental Agreement (“IGA”), authorized pursuant to ORS 190.110, is entered into between _____ School District, (“District”) and the City of Portland (“City”). District and City may be referred to individually as a “party” and collectively as “the parties.”

RECITALS

- A. Education is one of the top four overarching goals of the City’s Portland Plan;
- B. Arts and music are important parts of a high quality, well-rounded education.
- C. Non-profit arts and culture organizations play a key role in the education of our children, the economic vitality of our region, and the livability of our city.
- D. Budget cuts have resulted in a steep decline of arts and music education in Portland schools leaving nearly 12,000 students in 26 schools with no access to certified instruction in art, music, dance or drama as of 2012.
- E. Portland schools have fallen well behind the national average with only 18% of our elementary schools offering art instruction (compared to 83% nationally) and 58% of our elementary schools offering music (compared to 94% nationally).
- F. National research links access to arts and music education to improved test scores, graduation rates and college admittance, particularly for lower-income students and students of color. And, as of 2011, 41% of Portland’s high school students do not graduate with their class.
- G. Cities with thriving arts and culture communities attract businesses, develop a creative workforce and create economic development opportunities across multiple sectors.
- H. This IGA will assist in restoring arts and music education to our schools by providing stable, long-term funding for certified arts and music teachers – ensuring access to the arts for every Portland elementary school student.
- I. This IGA is intended to improve the quality, accessibility, diversity and stability of arts and culture in Portland by providing general operating support to non-profit Portland arts organizations that demonstrate artistic excellence, proven service to the community, administrative and fiscal competence and provide a wide range of high quality arts programming to the public.

J. This IGA will provide grant funding to schools and to non-profit organizations make arts and culture experiences widely available to school children and every Portland resident, regardless of income or neighborhood.

K. The City's Revenue Bureau is authorized to receive gross revenues collected as a result of the Arts Education and Access Income Tax and distribute a portion of the net revenues to District

L. District has agreed to spend the money to ensure that funds are used to pay for the costs of providing certified arts teachers and music teachers to elementary schools within the District.

AGREEMENT

1. Recitals. The recitals above are hereby incorporated by reference.

2. Effective Date/Term. This IGA is effective from the date that all parties have executed this IGA. The term of this IGA is until June 30, 2014. It shall automatically renew each year for a period of three years thereafter so long as the Arts Education and Income Tax is in effect.

3. Definitions:

a. "Average teacher salary" means the average of all certified teachers salaries within the District who are actually teaching school and not in full time administrative positions, calculated on the teachers' base pay, including associated employer paid payroll costs, such as taxes, insurance and PERS, but excluding premium or differential pay, or any other sums that may be paid for the performance of duties outside of teaching classes during regular school hours.

b. "Bureau" means the Revenue Bureau of the City of Portland.

c. "Gross Revenues" means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.

d. "K-5 students" means children in the School Districts in grades Kindergarten through 5th grade. "Portland K-5" students shall mean students that reside within the geographical boundary of the City of Portland.

e. "Net Revenues" means the revenue remaining after collection, administrative and other costs and refunds are deducted from Gross Revenues.

4. Payment Calculation: If the Arts Education and Access Income Tax is approved by City voters the City's Revenue Bureau will receive the money collected and distribute a portion of Net Revenues to District in the following manner:

a. District will provide its average teacher salary within the district and the estimated average daily membership ("ADM") of K-5 students for the 2013/2014 school year to the Bureau by May 1, 2013. Any ADM figure shall be adjusted in order to count each kindergarten students as one student.

b. The Bureau initially will distribute Net Revenues to District based on the following formula:

Average teacher salary X (the estimated ADM of K-5 students ÷ 500).

5. Distribution of Funds:

a. The Bureau will distribute 50% of the Net Revenues due to District as determined by the calculation stated in Paragraph 4.b. by October 1, 2013;

b. By November 1, 2013, District will provide the Bureau with an updated and revised ADM of K-5 students for the 2013/2014 school year. The Bureau will then revise the amount of Net Revenues owed to District based on the revised and updated figures ("the revised amount.")

c. By January 15, 2014, the Bureau will subtract the funds already paid to District on October 1, 2013 from the revised amount and pay District the remainder.

6. Provision of services: District shall provide arts and music education to all K-5 students in each of its elementary schools.

7. Supplemental Funding: It is the intention of this IGA is to add to the number of existing certified arts and music teachers without creating financial problems for District. To that end, District will ensure there will be a least one full time employee (FTE) of certified arts and/or music instruction at each school within the district that educates K-5 students.

8. Audit: District will provide its Comprehensive Audit and Final Report (CAFR) each year to the Bureau for the purpose of tracking compliance with this IGA. The CAFR shall specifically identify the funds received and expended pursuant to this program.

9. Sequential Curriculum: District must provide arts or music education to its elementary school students in each grade from Kindergarten through 12th grade.

10. Coordination with RACC: District will coordinate with the Regional Arts and Culture Council (RACC) to ensure that District is providing high quality arts and music education based on the resources available including those provided by the Arts Education and Access Fund. In the event that RACC notifies the City that District is not meeting the expectations of this provision, the parties will consider this to be a "dispute" under this IGA and the City and District shall engage in dispute resolution as required by Paragraph 22.

11. Use of Funds/Indemnification: District will use the Net Revenues it receives from the City in accordance with this IGA and shall not use the funds for any other purpose

whatsoever. District shall hold harmless, indemnify and pay back the City for any expenditure of funds that is not in accordance with the requirements of this IGA.

12. Amendments. The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. The Mayor of the City of Portland, or designee, is authorized to amend this IGA provided it does not increase the cost to the City.

13. Captions. The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.

14. Law/Choice of Venue. Oregon law, without reference to its conflict of laws provisions, shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and Litigation shall be in Multnomah County, Oregon.

15. Severability/Survival. If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.

16. No Third Party Beneficiary. City and District are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

17. Merger Clause. This IGA constitutes the entire IGA between the parties. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, IGAs, or representations, oral or written, not specified herein regarding this IGA.

18. Counterparts/Electronic Signatures. This IGA may be executed in any number of counterparts, all of which when taken together shall constitute one IGA binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures.

19. Assignment. No Party shall assign or transfer any interest in this IGA, nor assign any claims for money due or to become due under this IGA, without the prior written approval of the other Parties. This IGA shall bind and inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and permitted assigns.

20. Subsequent Years: After the school year 2013/2014, the parties shall take the actions required above by the same dates in subsequent school years so long as the Arts Education and Access Income Tax remains in effect.

21. Termination: This IGA may be mutually terminated at any time by written consent of the parties. The City may unilaterally terminate this IGA if District fails to use the Net Revenues in accordance with his IGA.

22. Dispute Resolution: In the event a dispute arises regarding the use of the Net Revenues by District or any other matter covered by this IGA, the parties agree to have high level representatives of City and District to engage in discussions before taking any legal action. If discussions fail to resolve the issue the parties shall engage in mandatory mediation in an attempt to resolve the dispute. In the even of mediation the parties shall each pay one-half of he mediator's bill. If mediation fails to resolve the matter either party may take any legal action permitted to it under the law of the State of Oregon.

IN WITNESS WHEREOF, the duly authorized representatives of District and District have executed this Contract as of the date and year first above written.

CITY OF PORTLAND

SCHOOL DISTRICT

Notice of City Measure Election

SEL 802

rev 1/12: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

City and Notice Information

Notice is hereby given on August 30, 2012, 2012, that a measure election will be held in

City of Portland

Oregon on November 6th, 2012.

Name of City or Cities

Date of Election

The following shall be the ballot title of the measure to be submitted to the city's voters:

Caption 10 words

Restore School Arts, Music Education; Fund Arts through Limited Tax.

Question 20 words

Shall Portland restore arts, music for schools and fund arts through income tax of 35 dollars per year?

Summary 175 words

This measure creates a limited income tax of \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

Accountability measures include:

- Administrative costs are capped.
- Expenditures subject to oversight by citizen committee.
- Independent financial audits of RACC and School District expenditures.

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due.

The following authorized city official hereby certifies the above ballot title is true and complete, which includes publication of notice and the completion of the ballot title challenge process.



Signature of Authorized City Official not required to be notarized

8/27/12

Date Signed mm/dd/yy

Lavonne Griffin-Valade

Printed Name of Authorized City Official

City Auditor

Title



CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

JOHN A. WITTMAYER
JUDGE

PHONE (503) 988-3165
FAX (503) 276-0969

August 14, 2012

Mr. Eric Fruits
4318 NE Royal Court
Portland, OR 97213

Mr. Robert Clark
3207 SE Brooklyn Street
Portland, OR 97202

Mr. James Van Dyke
City Attorney
1221 SW 4th Avenue, Room 430
Portland, OR 97204

RECEIVED

AUG 17 2012

City Attorneys Office

Re: Eric Fruits v. City Council of the City of Portland, Case No. 1207-08606
Robert Clark v. City Council of the City of Portland, Case No. 1207-08635

Dear Mr. Fruits, Mr. Clark and Mr. Van Dyke:

On July 30, 2012, these consolidated cases came before the Court for hearing pursuant to ORS 250.296 on Petitioners' challenges to the Ballot Title prepared by Respondent following the adoption of Council Resolution No. 36939. Resolution 36939 refers to the voters for the November 6, 2012 general election a measure to adopt a tax, the proceeds from which will be used to supports arts education in schools and to fund arts programs through grants.

Petitioners challenge the various component parts of the Ballot Title, i.e. the Caption, the Question and the Statement in several respects, asserting that they are "insufficient, not concise or unfair." ORS 250.296(1). Petitioners variously propose alternative wording for the Ballot Title.

ORS 250.035(1) requires that a city ballot title consist of three component parts:

"(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.

Although both Petitioner Fruits and Petitioner Clark challenge the various components of the ballot title, neither Petitioner makes any specific challenge that asserts the various components of the City's proposed ballot title are not "concise." As ORS 250.035(1) sets forth a limit on the number of words that may be contained in the various component parts of a ballot title, and the City's proposed ballot title complies with this limit, I find that the Caption, the Question and the Summary proposed by the City are all in compliance with the requirement law that they be "concise."

The Caption:

The Caption provided by the City is as follows:

"Restore School Arts, Music Education; Fund Arts through Limited Tax."

Petitioner Fruits challenges the City's proposed Caption in several respects, including the following:

- Petitioner Fruits asserts it is misleading in that the use of the word "restore" connotes a sense of completeness or totality, and unless the proposal would completely restore lost funds it is inappropriate to describe it thusly. Petitioner Fruits also asserts that the proposal contains no standard by which such a restoration could be measured.
- Petitioner Fruits asserts the use of the word "limited" to describe the tax is insufficient or unfair because that word is not commonly understood and gives the impression the tax will expire at some future date, whereas it contains no sunset clause.
- Petitioner Fruits objects that the caption fails to say the tax is retroactive to the beginning of 2012.

Petitioner Fruits suggests the caption should read as follows:

"Creates retroactive, permanent, per capita poll tax on Portland residents."

Petitioner Clark, likewise, challenges the City's proposed Caption as in violation of ORS 250.296.

The Question:

The Question provided by the City is as follows:

"Shall Portland restore arts, music for schools and fund arts through income tax capped at 35 dollars per year?"

Petitioner Fruits challenges the City's proposed Question on the following grounds:

- Petitioner Fruits objects to the Question's use of "restore," consistent with Petitioner Fruits' challenge to the use of "restore" in the Caption.
- Petitioner Fruits asserts the proposed tax is inconsistent with commonly accepted definitions of an income tax, and instead argues it is a head tax or a poll tax.
- Petitioner Fruits argues that the use of "capped" is misleading for a flat tax of \$35.00, and that it is redundant, and also that it is misleading because of the possibility of future increases.

Petitioner Fruits suggests the following question in place of the City's proposed Question:

"Shall City of Portland impose retroactive, permanent, per capita poll tax on city residents meeting minimum age and income requirements?"

Petitioner Clark challenges the City's proposed Question on the following grounds:

- It inaccurately calls it an "income tax" whereas it is a poll tax.
- It is insufficient or unfair because to describe it as "capped" is misleading, because the tax rate is a flat \$35 for every person subject to the tax.

Petitioner Clark suggests three alternatives for the Question:

"Shall Portland restore arts, music for schools and fund arts through a yearly 35 dollar tax assessed each non-exempt resident?" or

"Shall Portland restore arts, music for schools and fund arts through a \$35 tax assessed annually against each non-exempt resident?" or

"Shall Portland restore arts, music for schools and fund arts through 35 dollar tax assessed annually against each non-exempt resident?"

The Statement:

The Statement summarizing the measure provided by the City is as follows:

"This measure creates a limited income tax capped at \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- *Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.*
- *Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).*

Accountability measures include:

- *Administrative costs are capped.*
- *Expenditures subject to oversight by citizen committee.*
- *Independent financial audits of RACC and School District expenditures.*

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due."

Petitioner Fruits challenges the City's proposed Statement, asserting it is "insufficient, not concise and unfair," in violation of ORS 250.296. Petitioner Fruits suggests the statement summarizing the measure caption should read as follows:

"If approved by voters, this measure will impose a permanent, \$35 per capita poll tax on all city residents of voting age who meet minimum income thresholds established by the city. The tax is retroactive to January 1, 2012 and has no expiration date. There would be an exemption available based on 100% of the Federal Poverty Guidelines (updated annually) based on family size. 'Income earning adults' would include individuals with wage (W-2) income, self-employment income, rental income, retirement income (including Social Security income) or any other income.

The permanent tax shall be known as the Arts Education and Access Income Tax. All monies collected by the tax shall be deposited into the Arts Education and Access Fund, to be administered by city employees.

The city estimates the permanent tax will raise approximately \$12 million per year. Net revenues of the fund shall be distributed by the city to local school districts to hire certified arts or music education teachers for K-5 elementary students who reside and attend a public elementary school within city limits."

Petitioner Clark also challenges the City's proposed Statement, but does not suggest a specific alternative to the City's proposed language.

Analysis – general comments:

There is a dearth of appellate precedent specifically interpreting ORS 250.296 because the parties agree appellate review is not available for challenges to city ballot titles, ORS 250.296(3) (“[t]he review by the Circuit Court shall be the ...final review...”). However, the Court is generally guided by the abundance of Oregon Supreme Court opinions reviewing challenges to state ballot titles. The Court’s role in a ballot title challenge such as the challenges asserted here by Petitioners Fruits and Clark is not to change the ballot title because the Court might be able to write a “better” title, but instead to make changes and certify a different ballot title only if the ballot title proposed by the City is “insufficient, not concise, or unfair.”

The Caption:

The Caption is not “insufficient, not concise, or unfair.” Petitioner Fruits’ objections to the use of the word “restore” are not well taken. The Court rejects Petitioner Fruits’ asserting that the word “restore” connotes some form of complete restitution of lost funds.

Likewise, Petitioner Fruits’ objection to the use of the word “limited” is unfounded as well. While the word “limited” has many meanings and uses, including limited in duration, it is not unfair or insufficient to use the word to describe the proposed tax is \$35, as the word is used here.

In the very restrictive opportunity to write a caption not to exceed 10 words, it is not insufficient or unfair to not include a reference to the beginning of the tax year. This proposed tax is not retroactive, as is asserted by Petitioner Fruits. If adopted by the voters in November 2012, it will apply to persons with income during 2012.

The Question:

Both Petitioners assert that the description of the proposed tax in the Question as an “income tax” is insufficient and unfair because in fact the proposed tax is a head tax or a poll tax. The proposed tax at issue here is not a head tax or a poll tax because it is not assessed per capita – it is assessed only upon income-earning individuals age 18 or older in households above the federal poverty guidelines.

As noted above, the City’s proposed Question includes the phrase “tax capped at 35 dollars per year.” Both Petitioners challenge the use of the word “capped,” because no one paying the tax will pay anything less than \$35.00 per year. The City responds that the use of “capped” simply means \$35.00 is the “high point” of the tax.

The Court finds that as used in the Question proposed by the City the word “capped” is both insufficient and unfair, in that in common understanding to have a “cap” implies the possibility the tax may be something less than the “cap.”

The Court will sign an Order, to be prepared by Respondent’s attorney, certifying to the City Elections Officer the following Question in lieu of the Question proposed by the City:

"Shall Portland restore arts, music for schools and fund arts through income tax of 35 dollars per year?"

The Statement:

The objections of Petitioners Fruits and Clark to the City's proposed Statement largely track their objections to the City's proposed Caption and Summary, noted above.

Additionally, Petitioner Fruits objects to that portion of the City's proposed Statement that provides that tax receipts will be used to provide "high-quality" arts access (the objection is to the use of the words "high quality"). Petitioner Fruits' objections in this regard are not well taken because this phrase accurately describes the City's intended use of the tax receipts.

Petitioner Fruits also objects to the reference to the "federal poverty level" in the City's proposed Statement, arguing that instead "federal poverty guidelines" should be used. The Court finds that the use of the phrase "federal poverty level" in the City's proposed Statement is not insufficient or unfair.

The Court will sign an Order, to be prepared by Respondent's attorney, certifying to the City Elections Officer the following Statement in lieu of the Statement proposed by the City:

"This measure creates a limited income tax of \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- *Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.*
- *Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).*

Accountability measures include:

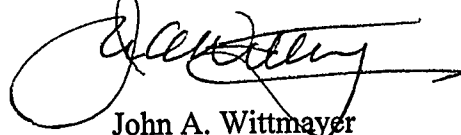
- *Administrative costs are capped.*
- *Expenditures subject to oversight by citizen committee.*
- *Independent financial audits of RACC and School District expenditures.*

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due."

Order:

Counsel for Respondent City shall prepare an Order consistent with the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Wittmayer". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

John A. Wittmayer
Circuit Court Judge

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

Case No.: 1207-08635

4 ROBERT CLARK,

5 Petitioner,

6 vs.

7 CITY COUNCIL OF THE CITY OF
8 PORTLAND,

9 Respondent

)

)

) PETITION FOR BALLOT TITLE REVIEW
(Damages are not a subject of this action)

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10
11 NATURE OF CLAIM

12 1.

13 This is a petition for review of the Ballot Title prepared by Respondent City Council of the
14 City of Portland (hereinafter "Council") pursuant to Council Resolution No. 36939. This Petition
15 for review is brought pursuant to ORS 250.296.
16

17 PARTIES

18 2.

19 Petitioner Robert Clark (hereinafter "Petitioner") is an Oregon elector, registered to vote in
20 Multnomah County and residing within the city limits of Portland. Petitioner is dissatisfied with
21 the proposed Ballot Title and has standing to bring this petition under ORS 250.296(1).
22

23 3.

24 Respondent City Council of the City of Portland is the legislative body of the City of Port-
land, a political subdivision of the State of Oregon, located in Multnomah County.
25
26

1 **FACTS**

2 4.

3 On or about June 27, 2012, City Council of the City of Portland approved Resolution
4 No. 36939, (Refer Portland City Code Changes to Title 3 and Title 5 regarding arts education
5 and access to City voters at the November 6, 2012, General Election ballot), which referred a
6 ballot measure to the November 6, 2012, general election and included proposed ballot title lan-
7 guage. Resolution No. 36939 along with supporting documents and written testimony is attached
8 as Clark-1.

9 5.

10 The ballot title specified by Resolution No. 36939 and posted by the Elections Office of the
11 City of Portland (<http://www.portlandonline.com/auditor/?c=39546&a=402820>), and attached to
12 this petition as Clark-2, has as its Question the following: "Shall Portland restore arts, music for
13 schools and fund arts through income tax capped at 35 dollars per year?"

14 6.

15 The City of Portland Revenue Bureau (Revenue Bureau) uses total city of Portland resident
16 population, adult demographic (percentage of adults in population), poverty demographic (per-
17 centage of adults living in poverty), and compliance rate to project the gross revenue which
18 would be raised by the ballot measure tax specified by Resolution No. 36939 (see pages 21 and
19 22, Exhibit 1, Resolution No.36939; herein attached as Clark-1). The percentage of Portland
20 adult residents exempt from this proposed tax because of poverty (percentage of adults living in
21 poverty) is treated by the Revenue Bureau as a constant. In the Revenue Bureau's revenue pro-
22 jection, thus, income of Portland's non-exempt residents in the aggregate is immaterial. The
23 Revenue Bureau uses residency, adult status, poverty status (treated as a constant), and compli-
24 ance rate as the four factors determining the amount of gross revenue to be raised by the pro-
25 posed ballot measure tax.

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7.

The City of Portland plans to use voter registration data among other data to identify non-exempt residents (see page 30, Appendix-I of Exhibit 1, Resolution No. 36939; herein attached as Clark-1).

8.

My experience is most Portland voters think of the U.S. personal income tax, the State of Oregon personal income tax, and in the recent past the Multnomah I-Tax when they read the words income tax. After all, many of them file these income taxes each year. A key feature of all these income taxes is the amount of tax changes for each filer with the amount of his or her (or joint) income via a tax rate (e.g., 15% and 25% tax brackets).

9.

Another feature of the U.S. personal income tax and state of Oregon personal income tax is certain income is not taxed. Examples of such income include interest income stemming from common forms of municipal bonds, portions of social security income, and income distributions from Roth Individual Retirement Accounts (IRAs). Moreover, state and local jurisdictions are prohibited from taxing federal civil service pensions originating from service dating before October, 1991 (see line 17, Oregon state tax form 40 and associated instructions; herein attached as Clark-3).

10.

The Collins Discovery Encyclopedia, 1st Edition (Harper Collins Publishers 2005), defines income tax as follows: “a personal tax, usually progressive, levied on annual income subject to certain deductions.” This and other definitions of income tax are attached herein as Clark-4.

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10.

The Collins Discovery Encyclopedia, 1st Edition (Harper Collins Publishers 2005), defines income tax as follows: “a personal tax, usually progressive, levied on annual income subject to certain deductions.” This and other definitions of income tax are attached herein as Clark-4.

1 **CLAIM FOR RELIEF**

2 **(Ballot Title Is Insufficient, Not Concise, and Unfair)**

3
4 11.

5 Petitioner re-alleges and incorporates by reference paragraphs 1 through 10, above.

6 12.

7 The proposed Ballot Title is insufficient and unfair. In particular, the proposed Ballot Title
8 Question and Summary unfairly and incorrectly identify the tax to be imposed as an income tax.
9 This proposed tax is other than an income tax. The City's own Revenue Bureau does not use in-
10 come as a basis (i.e., as part of the tax base) in calculating gross revenues to be raised by the
11 proposed tax. Instead, the Revenue Bureau uses demographic factors and compliance factor as
12 the basis for calculating revenue from the proposed tax. Moreover, the Revenue Bureau indi-
13 cates voter registration records are expected to be used in some incidences in the administration
14 of the proposed tax. This should raise a flag the proposed tax may actually be a poll tax of sorts.

15 13.

16 The proposed Ballot Title is insufficient and unfair. In particular, the Ballot Title uses the
17 phrase "income tax capped at 35 dollars." This phrase is bound to confuse Portland voters, as it
18 implies the proposed tax varies in some continuous manner from \$0 on up to \$35 depending on
19 income of the non-exempt resident. Clearly, the proposed tax is not continuous in form. Nor,
20 does it depend on income. The non-exempt resident would pay \$35 regardless of whether he or
21 she receives \$0.01 or \$1 billion in income during a year. Thus, the proposed tax is not "capped"
22 but rather is fixed; and it is not an income tax but something other than an income tax.

23 14.

24 The proposed Ballot Title is insufficient and unfair. Taking paragraphs 12 and 13 above into
25 account, the Ballot Title infers traditional forms of tax free income, such as for example in-state
26 municipal bonds and Roth IRA distributions, would become subject to income taxation, at least

1 in part. Clearly, this would needlessly and wrongfully upend in some cases the tax “free” in-
2 come expectations Portlanders have developed with regard to certain types of investments and,
3 also, some pension-related incomes; seeing how the proposed tax is something other than an in-
4 come tax.

5
6 **REMEDY**

7 15.

8 For this First Claim for Relief, Petitioner requests that the Court issue a decision finding that
9 the Ballot Title prepared by Respondents fails to comply with the requirements of
10 ORS 250.035(1); and that the Ballot Title be modified so that the ballot measure tax not be de-
11 scribed as, or associated with being, an income tax. Petitioner recommends the following re-
12 wording of the proposed Ballot Title Question: Shall Portland restore arts, music for schools and
13 fund arts through a yearly 35 dollar tax assessed each non-exempt resident. Petitioner also seeks
14 reimbursement of his costs and disbursements.

1 **SERVICE**

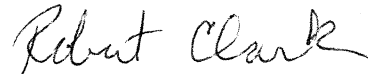
2 16.

3 Pursuant to ORS 250.296(2), Petitioner certifies that a copy of this Petition for Review was
4 hand delivered to the following on July 10, 2012:

5
6 City Attorney of the City of Portland
1221 SW 4th Avenue
7 Portland, OR 97204

Portland City Elections Officer
1221 SW 4th Avenue
Portland, OR 97204

8
9 Dated on this tenth day of July, 2012

10
11 
12 _____
Robert Clark
13 Petitioner

14 Robert Clark
3207 SE Brooklyn Street
15 Portland, Oregon 97202
16 (503) 233-2073
Elvsy3k@yahoo.com

MEASURE EXPLANATORY STATEMENT

Required for all Measures Submitted with Multnomah County Elections

ELECTION DATE November 6, 2012	MEASURE NUMBER 26-146
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BALLOT TITLE CAPTION **Restore School Arts, Music Education; Fund Arts through Limited Tax**

NAME OF PERSON RESPONSIBLE FOR CONTENT OF STATEMENT **Mayor Sam Adams**

NAME OF JURISDICTION PERSON REPRESENTS **City of Portland**

E-MAIL mayorsam@portlandoregon.gov	TELEPHONE NUMBER 503-823-4120	FAX NUMBER 503-823-3588
---------------------------------------	----------------------------------	----------------------------

Please use space below or attach text on a separate sheet of paper.

See attached.

WORD/NUMBER COUNT TOTAL (500 word/number limit) 402



 SIGNATURE OF PERSON RESPONSIBLE FOR CONTENT OF STATEMENT

8/29/12

 DATE

Please note new requirements in OAR 165-022-0040

Filing Explanatory Statements

- (1) The governing body for any local government which has referred a measure to the voters, shall submit an impartial, simple and understandable statement explaining the measure and its effect.
- (2) For any initiative or referendum by petition, an impartial, simple and understandable statement explaining the measure and its effect shall be submitted by the governing body of the local government only if the local government has an ordinance requiring the submission of such a statement.
- (3) Explanatory statements shall be limited to 500 words.
- (4) The county clerk shall reject any referred measure submitted without an explanatory statement**

INSTRUCTIONS

1. The Explanatory Statement shall be an impartial, simple and understandable statement explaining the measure and its effect and must be typewritten.
2. The word count total must not exceed 500 words/numbers.
3. If the Explanatory Statement exceeds the 500 word/number limit, the county clerk shall end the statement at 500 words/numbers.
4. The Explanatory Statement shall include the name and signature of the person responsible for the content of the statement and the name of the governing body that person represents.
5. The Explanatory Statement shall be filed with the county clerk of the county in which the city hall of the city or the administrative office of the special district is located.
6. Explanatory Statements shall be filed not later than 5:00 p.m. on the deadline for filing a notice of measure election.
7. Pursuant to ORS 251.415 the county clerk shall reject any statement which:
 - a. Contains any obscene, profane or defamatory language;
 - b. Incites or advocates hatred, abuse or violence toward any person or group; or
 - c. Contains any language which may not legally be circulated through the mail.
8. The county clerk shall not correct spelling, grammar or punctuation errors. Statements will not be returned for proofreading.

If you have any questions, call the Multnomah County Elections Division at 503-988-3720.

Multnomah County Elections
1040 SE Morrison St.
Portland OR 97214-2495
www.mcelections.org

BACKGROUND

Research shows that art and music are an essential part of a basic curriculum for students, especially in the elementary school years. Studies link access to arts education to improved attendance, increased participation in math and science, higher test scores, increased graduation rates and college admittance. The impact is even greater among low-income students and students of color.

Access to arts education for public school students in the City of Portland has declined steeply. For example, over the last five years Parkrose and Centennial School Districts have cut their art and music teaching staff by half. Portland Public Schools has dropped all arts instruction in 22 schools in just two years.

- In 2011, 18% of Portland elementary schools provide art instruction compared to 83% nationally.
- 58% of Portland elementary schools provide music instruction compared to 94% nationally.
- 28% of all Portland schools provide no arts instruction of any kind including music, drama, dance or visual arts. This is compared to just 3% of schools nationally.
- There are 11,596 Portland children attending schools that do not have any art, dance, drama, or music instruction.

HOW MEASURE 26-146 WORKS

The Arts Education and Access Fund will first go to all schools that serve Portland students within the six Portland school districts (Centennial, David Douglas, Parkrose, Portland Public, Reynolds, and Riverdale) to pay for certified arts education teachers for Kindergarten through 5th grade (K-5). Districts will receive the funds required to hire and maintain one certified arts teacher per every 500 students so that every K-5 student within the City of Portland will have access to arts education.

Remaining funds will be awarded as grants to non-profit organizations and schools to provide high-quality arts access for Kindergarten through 12th grade students and to make arts and culture experiences available to underserved communities. Administered by the Regional Arts & Culture Council, grants will be made to qualifying Portland-based non-profit arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high quality arts programs to the public. Grants will also be awarded to schools and non-profits that provide arts programs specifically for schoolchildren and underserved communities.

Measure 26-146 will generate the revenue to support the Arts Education and Access Fund through an income tax of \$35 per adult, income-earning resident of Portland. Residents living in households at or below the federal poverty limit will be exempt: they will not pay this tax.

ACCOUNTABILITY

An Independent Citizen Oversight committee that is representative of the City's diverse communities will be formed to annually review Fund expenditures and report the impact of the Arts Education and Access Fund to the public. Audits will be made available to the public annually.

After the expenditure of capped start-up costs, administrative costs of this Fund are limited to 5 percent or less of Gross Revenues over a five year period.

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

4 ERIC FRUITS,

5 Petitioner,

Case No.: **1207-08606**

6 vs.

7 CITY COUNCIL OF THE CITY OF
8 PORTLAND,

9 Respondent

PETITION FOR BALLOT TITLE REVIEW
(ORS 250.296)

10
11 NATURE OF CLAIM

12 1.

13 This is a petition for review of the Ballot Title prepared by Respondent City Council of the
14 City of Portland (hereinafter "Council") pursuant to Council Resolution No. 36939. This Petition
15 for review is brought pursuant to ORS 250.296, which provides that "Any elector dissatisfied
16 with a ballot title filed with the city elections officer by the city attorney or the city governing
17 body, may petition the circuit court of the judicial district in which the city is located seeking a
18 different title and stating the reasons the title filed with the court is insufficient, not concise or
19 unfair. The petition shall name as respondent the city attorney or city governing body, depending
20 on who prepared the ballot title, and must be filed not later than the seventh business day after
21 the title is filed with the city elections officer. The court shall review the title and measure to be
22 initiated or referred, hear arguments, if any, and certify to the city elections officer a title for the
23 measure which meets the requirements of ORS 250.035."

1 **PARTIES**

2 2.

3 Petitioner Eric Fruits (hereinafter "Petitioner") is an Oregon elector, registered to vote in
4 ~~Multnomah County and residing within the city limits of Portland at 4318 NE Royal Court. Peti-~~
5 tioner is dissatisfied with the proposed Ballot Title and has standing to bring this petition under
6 ORS 250.296.

7 3.

8 Respondent City Council of the City of Portland is the legislative body of the City of Port-
9 land, a political subdivision of the State of Oregon, located in Multnomah County.

10
11 **FACTS**

12 4.

13 On or about June 27, 2012, City Council of the City of Portland approved Resolution
14 No. 36939, (Refer Portland City Code Changes to Title 3 and Title 5 regarding arts education
15 and access to City voters at the November 6, 2012, General Election ballot), which referred a
16 ballot measure to the November 6, 2012, general election and included proposed ballot title lan-
17 guage. Resolution No. 36939 along with supporting documents and written testimony is attached
18 as Exhibit 1.

19 5.

20 The ballot measure specified by Resolution No. 36939 would impose a tax of \$35 on each
21 income-earning resident of the City of Portland, Oregon who is at least eighteen years old and is
22 in a household that is above the federal poverty guidelines established by the federal Department
23 of Health and Human Services for that tax year. Individuals who satisfy all of the conditions are
24 subject to the entire amount of the tax. Individuals who do not satisfy any one of the conditions
25 would not be subject to the tax.

1 6.

2 The Financial Impact and Public Involvement Statement for Council Action Items included
3 with Resolution No. 36939 states, “The tax is a flat \$35 per income-earning resident.”

4 7.

5 On or about June 28, 2012, the Portland City Elections Division posted the proposed Ballot
6 Title language within Resolution No. 36939 on the city’s website.

7 <<http://www.portlandonline.com/auditor/?c=39546&a=402820>>

8
9 **CLAIM FOR RELIEF**

10 **(Ballot Title Is Insufficient, Not Concise, and Unfair)**

11 *Pursuant to ORS 250.296*

12 8.

13 Petitioner realleges and incorporates by reference paragraphs 1 through 7, above.

14 9.

15 The proposed Ballot Title is insufficient, not concise, and unfair as set out in the following
16 paragraphs.

17 10.

18 The proposed Ballot Title Caption and Question misleadingly indicate that the projected tax
19 revenues would “restore” arts and music education to schools within the City of Portland. The
20 word “restore” connotes a sense of completeness or totality. Thus, unless the measure completely
21 or totally replaces funds that were lost or diminished, then the measure cannot be said to “re-
22 store” funding. Resolution No. 36939 makes no mention of the amount of lost or diminished
23 funding for arts and music education. Instead, the resolution compares Portland schools with a
24 national average. Thus, Council provides no measure by which one can evaluate whether the tax-
25 es raised by the measure would “restore” to some previous level funding for arts and music edu-
26 cation. Use of the word “restore” is biased and unfairly gives the impression that the revenues

1 from the proposed tax will return students to some unknown Golden Age of arts and music edu-
2 cation.

3 11.

4 ~~The proposed Ballot Title Caption describes the tax as a "limited tax." The term "limited tax"~~
5 is not commonly understood. Its use, particularly in the Caption, has a significant potential to
6 mislead.

7 12.

8 The proposed Ballot Title Caption and Summary describe the tax as "limited." The Meas-
9 ure's tax has no "sunset" clause, thus the Measure is unlimited in duration. To describe the tax as
10 "limited" would give the unfair and false impression that the tax is set to expire at some defined
11 future date. The tax is a specific amount (\$35 per resident), thus to describe the amount of tax as
12 "limited" is superfluous.

13 13.

14 The proposed Ballot Title Question and Summary is insufficient in its failure to indicate that
15 the tax would be applied retroactively to January 1, 2012. This omission is unfair and provides a
16 misleading impression that tax will not be levied on individuals until after the November 2012
17 election.

18 14.

19 The proposed Ballot Title Question and Summary unfairly and incorrectly identify the tax to
20 be imposed as an income tax. The tax is a flat tax of a specific amount imposed on any individual
21 who four either/or conditions: (1) is a resident of the City of Portland, (2) is 18 years of age or
22 older, (3) earns any amount of income, and (4) in a household that is above the federal poverty
23 guidelines. Individuals who satisfy all of the four conditions are subject to the entire amount of
24 the tax and individuals who do not satisfy any one of the conditions would not be subject to the
25 tax. Thus, on its face, Resolution No. 36939 specifies a poll tax, also known as a head tax. The
26 proposed Ballot Title language describing the tax as an income tax is false, biased, and unfair.

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15.

The proposed Ballot Title is insufficient in its failure to indicate that a poll tax or head tax cannot be levied or collected anywhere in the State of Oregon. This omission is unfair and provides a misleading impression that the City of Portland has the authority to levy and collect a poll tax or a head tax.

16.

The proposed Ballot Title question and summary describe the tax as “capped.” The tax is of a specific amount (\$35 per person), thus to describe the amount of tax as “capped” is superfluous. Use of the word “capped” in conjunction with the word “limited” is redundant. The measure does not provide any prohibition on future increases in the amount of the tax. Use of the words “capped” or “limited” are biased and unfairly give the false impression that the amount of the tax could never be increased. Use of the words “capped” and “limited” with respect to the amount of the tax is biased and unfairly gives the impression that the amount of the tax is small or inconsequential. Furthermore, use of the words “capped” and “limited” gives the false impression that the amount of the tax varies with an individual’s income up to a specific upper limit.

17.

The proposed Ballot Title summary indicates that a portion of the revenues would fund “high-quality” arts access. Because the quality of the programs cannot be known until after the programs are in place, the claim that the programs would be “high quality” is speculative, biased, and unfair.

18.

The proposed Ballot Title summary indicates that individuals in households below “federal poverty level” would not be subject to the tax. The United States Department of Health and Human Services advises that the phrase “federal poverty level” is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

1 <<http://aspe.hhs.gov/poverty/12poverty.shtml/>> “Federal poverty guidelines” is the correct term,
2 the preferred term, and the term that is specified in the proposed measure itself.
3

4 **REMEDY**

5 19.

6 For this First Claim for Relief, Petitioner requests that the Court issue a decision finding that
7 the Ballot Title prepared by Respondents fails to comply with the requirements of ORS 250.035
8 and should be modified as demonstrated in Exhibit 2 or in similar manner to reduce possibility of
9 voter confusion. Petitioner also seeks reimbursement of his costs and disbursements.
10

11 **SERVICE**


12 20.

13 Pursuant to ORS 250.296(2), Petitioner certifies that a copy of this Petition for Review was
14 hand delivered to the following on July 9, 2012:

15
16 City Council of the City of Portland
17 1221 SW 4th Avenue
18 Portland, OR 97204

16 Portland City Elections Officer
17 1221 SW 4th Avenue
18 Portland, OR 97204

18 Dated on this 9th day of July, 2012
19
20

21 
22 Eric Fruits
23 Petitioner, Pro se
24
25
26