

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDING A NEW	)	ORDINANCE NO. 20-1453
METRO CODE SECTION 2.19.270	)	
ESTABLISHING A SUPPORTIVE HOUSING	)	Introduced by Chief Operating Officer
SERVICES REGIONAL OVERSIGHT	)	Marissa Madrigal in concurrence with
COMMITTEE	)	Council President Lynn Peterson

WHEREAS, on February 25, 2020, the Metro Council adopted Ordinance 20-1442 which, among other things, imposed business and personal income taxes to fund a Supportive Housing Services Program; and

WHEREAS, Resolution 20-5083 referred Ordinance 20-1442 (Supportive Housing Services) to the voters for approval, which was designated as Measure 26-210 by Multnomah County Elections and placed on the May 2020 ballot (the “Measure”); and

WHEREAS, on May 19, 2020, the Metro area voters approved the Measure, thereby approving Ordinance 20-1442; and

WHEREAS, recognizing the importance of independent oversight for new Metro programs, the Measure established a Supportive Housing Services Regional Oversight Committee; and

WHEREAS, on November 19, 2020, the Metro Council appointed members to the Regional Oversight Committee in a manner and under the membership requirements as set forth in the Measure; and

WHEREAS, Resolution 20-5083 authorized the Metro Attorney to assign the Measure’s sections with title, chapter and section numbers for the Metro Code as the Metro Attorney deemed appropriate based on current Metro Code titles, chapters and sections; and

WHEREAS, this ordinance codifies, amends and supplements the Measure; and

WHEREAS, the sections of the Measure regarding imposition of the personal and business income taxes are being codified in new Metro Code Chapter 7.05 (Tax Administration), Chapter 7.06 (Personal Income Tax), and Chapter 7.07 (Business Income Tax); and

WHEREAS, the sections of the Measure regarding the programmatic aspects of providing Supportive Housing Services are being codified into a new Title XI, Chapter 11.01 of the Metro Code; and

WHEREAS, this Ordinance codifies the Measure’s Supportive Housing Services Regional Oversight Committee and its requirements, membership and responsibilities into a new Metro Code Section 2.19.270; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. A new Metro Code Section 2.19.270 attached as Exhibit A and entitled “Supportive Housing Services Regional Oversight Committee” is added to Metro Code Chapter 2.19.

2. This ordinance codifies, amends and supersedes the language in Measure 26-210. To the extent that any terms or conditions in Measure 26-210 conflict with the terms and conditions in this ordinance, this ordinance prevails.

ADOPTED by the Metro Council this 17th day of December 2020.



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Lynn Peterson, Council President

Attest:

Approved as to Form:



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Jaye Cromwell, Recording Secretary



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Carrie MacLaren, Metro Attorney

### **2.19.270 Supportive Housing Services Regional Oversight Committee**

- (a) Committee Established. A 15-member regional oversight committee (hereafter, “Supportive Housing Services Regional Oversight Committee” or “Regional Oversight Committee”) will oversee the Supportive Housing Services Program.
- (b) Purpose and Authority. The purpose and authority of the Supportive Housing Services Regional Oversight Committee is to:
1. Evaluate local implementation plans, recommend changes as necessary to achieve program goals and guiding principles, and make recommendations to Metro Council for approval;
  2. Accept and review annual reports for consistency with approved local implementation plans;
  3. Monitor financial aspects of program administration, including review of program expenditures; and
  4. Provide annual reports and presentations to Metro Council and Clackamas, Multnomah, and Washington County Boards of Commissioners assessing performance, challenges, and outcomes.
- (c) Membership. The Supportive Housing Services Community Oversight Committee is composed of 15 members, as follows:
1. Five members from Clackamas County.
  2. Five members from Multnomah County.
  3. Five members from Washington County.
- (d) Jurisdictional Representation. In addition to the 15 members described in subsection (c), one representative each from the Clackamas, Multnomah and Washington County Boards of Commissioners, Portland City Council and Metro Council will serve on the committee as non-voting delegates.
- (e) Membership Attributes. The committee’s membership will include a broad range of personal and professional experience, including people with lived experience of homelessness or housing instability. The committee will also reflect the diversity of the region. The membership will include people with the following experiences, perspectives and qualities:

1. Experience overseeing, providing, or delivering supportive housing services;
2. Lived experience of homelessness or severe housing instability;
3. Experience in the development and implementation of supportive housing and other services;
4. Experience in the delivery of culturally-specific services;
5. Experience in the private-for-profit sector;
6. Experience in the philanthropic sector;
7. People who identify as Black, Indigenous and people of color, people with low incomes, immigrants and refugees, the LGBTQ+ community, people with disabilities, and other underserved and/or marginalized communities; and
8. Experience in a continuum of care organization.

A person may represent more than one of the subsections above. The membership must have broad representation and geographical diversity.

- (f) Terms. Nine of the initial Committee members will serve a one-year term, and the Council may reappoint those nine members for up to two additional two-year terms.
- (g) Meetings. The Committee will meet no less than quarterly and more frequently as necessary.
- (h) Oversight Committee Review. Metro may conduct a review of the regional oversight committee's role and effectiveness as appropriate.

IN CONSIDERATION OF

- ORDINANCE 20-1452, FOR THE PURPOSE OF ADDING A NEW TITLE XI TO THE METRO CODE AND A NEW CHAPTER 11.01 “SUPPORTIVE HOUSING SERVICES PROGRAM” WITHIN THAT TITLE; and
- ORDINANCE 20-1453, FOR THE PURPOSE OF ADDING A NEW METRO CODE SECTION 2.19.270 ESTABLISHING A SUPPORTIVE HOUSING SERVICES REGIONAL OVERSIGHT COMMITTEE; and
- ORDINANCE 20-1454, FOR THE PURPOSE OF AMENDING METRO CODE TITLE VII TO ADD NEW CHAPTERS 7.05 “INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES,” 7.06 “PERSONAL INCOME TAX,” AND 7.07 “BUSINESS INCOME TAX”
- RESOLUTION 20-5148 TO ADOPT THE SUPPORTIVE HOUSING SERVICES WORK PLAN

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Date: November 24, 2020 *updated*  
*December 11, 2020*  
Department: Planning and Development  
Meeting Date: December 3, 2020 *updated*  
*prior to December 17, 2020 meeting*

Prepared and Presented by: Jes Larson  
and Rachael Lembo  
Length: 20 minutes

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**ISSUE STATEMENT**

In February 2020, the Metro Council referred a ballot measure to voters that would authorize funding for regional supportive housing services and in May 2020, voters approved it. The ordinance authorizing the income taxes stated that, upon passage of the ballot measure, the “Metro Council will take further action to establish rules to enforce and implement the taxes imposed by the measure.”

Following direction given by Metro Council during the November 17, 2020 work session, these ordinances update Metro code to establish the Regional Supportive Housing Services program and oversight committee and to enact the tax collection system. The resolution approves a programmatic work plan as needed to direct implementation for the Planning and Development department.

Certain sections of the tax code have prompted discussion and comments since the November 17 work session.

- **Apportionment methodology.** Apportionment refers to the way a business allocates their net income when they also operate outside the Metro district, in this case specifically of services and other intangible items. Multnomah County and the City of Portland use a cost of performance method, and the State of Oregon uses a market based method. Metro’s charter authority to impose income taxes also provides latitude on how it structures those taxes. With respect to apportionment,

Metro can choose either a cost of performance or market based methodology for apportionment of income. At the work session, staff proposed we adopt the method consistent with Multnomah County and the City of Portland because it will result in lower collection costs. However, Metro could alternatively choose the market based method and align with the State of Oregon. The City has estimated this would increase collection costs by approximately \$500,000 per year. Metro staff do not have access to data to analyze the impact to tax revenue, however, this would result in a higher number of nonresident businesses subject to tax, which can be more challenging for enforcement.

- **Head of household filing status.** As noted at the November 17 work session, Metro has two filing statuses, single and joint, however there are five filing statuses available at the State level. Staff proposed individuals using head of household filing status on their State tax return would file a Metro single tax return, which has an income exemption of \$125,000. Alternatively, those filers could file a Metro joint tax return, which would result in an income exemption of \$200,000. The estimated maximum tax revenue impact from this change is a reduction of \$2,812,500, based on available State data.

*Update: Metro Council amended the code to provide that taxfilers using head of household filing status would file a joint Metro tax return. Exhibit B of Ordinance No. 20-1454 has been updated.*

- **Employer withholding.** At the November 17 work session, staff proposed Metro require employers to *offer* withholding, but not require mandatory withholding. This was primarily due to the challenge for employers in determining the correct withholding amount and the risk of over-withholding. Since that work session, staff have been working with Multnomah County staff as they prepare their code for the Preschool for All income tax, with the goal of aligning the codes to provide consistency to tax filers. Through those discussions Metro and Multnomah County have agreed on a revised withholding recommendation: voluntary employer withholding in calendar year 2021, and mandatory employer withholding for employees earning more than \$200,000 beginning calendar year 2022 unless an employee chooses to “opt out” of withholding. Thus, although employers would be required to withhold, employees would still have the option to opt in or out of withholding, just as with most income taxes. Requiring employer withholding at the higher threshold of \$200,000 results in less risk of over-withholding than if a lower threshold was used. The attached code proposal reflects this updated recommendation.
- **Pass-through entity taxation.** In the ordinance which referred this measure to the voters, Metro stated it would utilize, as guidance, the Multnomah County Business Income Tax rules and procedures for the business income tax. The County taxes all businesses, including pass through entities such as s-corporations and partnerships. At a State level, pass through entities do not pay business tax based on net income, instead they report net income to their owners, who then pay personal income tax

on that income. As a result of this, Metro developed a solution to ensure pass through income was not taxed twice. Alternatively, Metro could exempt pass through entities from the business tax, and tax the owners via the personal income tax. Due to the income exemption on the personal income tax, this would result in lower tax revenue. The estimated maximum tax revenue impact from this change is a reduction of \$15,000,000, based on staff analysis on double taxation. This alternative would result in a number of complex changes throughout both the business and personal income tax codes. If Metro Council directs staff to prepare this code change it may be prudent to delay adoption of the ordinance by another week in order for the technical experts on the tax table to review the proposed changes and their possible effects.

*Update: After additional review and discussion with members of the tax implementation advisory table, these changes would require significant re-drafting and could delay adoption by months.*

- **PBA Testimony (November 19).** The Portland Business Alliance (PBA) provided oral and written comment at the November 19 Council Meeting, asserting that the “voter-approved ordinance and proposed code may run afoul of a state law requiring any Metro income tax to be consistent with the Oregon income tax.” PBA specifically asserted that Metro’s approach to income apportionment and entity-level taxation were not “consistent” with how the state administers its business income taxes. The PBA’s “consistency” assertions rely on ORS 268.505.

However, Metro has both Charter authority (Metro Charter, Chapter III, Section 11) and statutory authority (ORS 268.505) to impose personal and business income taxes. Accordingly, Metro has two completely independent sources of authority– or options – for imposing income taxes, though both require voter approval. At the time of adoption, and in the Measure itself, Metro was clear in its intent to use the Multnomah County Business Income Tax as guidance for implementing Metro’s business income tax. This provided direction to staff developing the proposed Code. Metro’s independent charter authority to impose these taxes does not require it to “be consistent” with state law (although it may choose to do so). Rather, it provides the Metro Council with flexibility in how the Council chooses to structure these taxes.

### **ACTION REQUESTED**

Staff requests adoption of Ordinances No. 20-1452, 20-1453, 20-1454 and Resolution 20-5148.

Ordinance No. 20-1454, for the purpose of amending Metro code title VII to add new Chapters 7.05, “Income Tax Administration for Personal and Business Taxes”, 7.06 “Personal Income Tax”, and 7.07 “Business Income Tax” contains an emergency clause and would become effective immediately upon adoption. This will allow staff to proceed with adoption of administrative rules to assist taxfilers with these new tax codes.

## **IDENTIFIED POLICY OUTCOMES**

The establishment of the Supportive Housing Services program and the regional oversight committee in the Metro Code and programmatic work plan will define and describe the roles, responsibilities and administrative actions needed for implementation of the program.

The Metro income tax codes codify certain provisions of the Supportive Housing Services Measure approved by the voters, and the codes will also establish rules to implement the taxes imposed by the measure in an effective and efficient manner. These rules provide details and also address tax considerations which were not addressed in the measure yet impact the tax paid by individuals and businesses and the total tax collected by Metro.

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

- Adoption of these ordinances and resolution. This will allow staff to proceed with establishment of the Supportive Housing Services program, regional oversight committee and implementation of the tax system.
- Adoption of these ordinances and resolution with revisions or modifications as described by Council.
- Rejection of these ordinances and resolution with other direction to staff for development of this program and the tax system. This would delay implementation.

## **STAFF RECOMMENDATIONS**

Staff recommend that Metro Council adopt Ordinances No. 20-1452, 20-1453, 20-1454 and Resolution 20-5148.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Implementation of the regional affordable housing bond program has been guided by a work plan developed by staff to define and develop the intentions described in the ballot measure. Staff have taken a similar approach with the Supportive Housing Services program to further develop and define the programmatic intentions of the ballot measure with a programmatic work plan.

Over the summer, a regional stakeholder advisory table was convened to provide guidance on early implementation questions. It was composed of a broad-based group of community stakeholders including culturally specific organizational leaders, housing, homeless and social service providers, behavioral health and healthcare providers and business interests. The table also included agency leadership from the three housing authorities and county homeless services agencies. The table met four times over the summer to prepare recommendations for the Metro Chief Operating Officer to inform development of the programmatic work plan and code, to be brought before Metro Council for consideration in the fall.

Development of the work plan has been further advised by Metro Council direction at the November 17<sup>th</sup> work session, and a public comment period that concluded on November 30<sup>th</sup>.



Metro staff formed a tax implementation advisory table to advise on technical aspects of tax implementation, technical issues, and provide recommendations to ensure a smooth, legal and easy tax collection process. Members included experts in taxation, tax policy, tax implementation and business stakeholders. The table met with staff five times this year and provided input on development of the tax codes.

## **BACKGROUND**

Homelessness and housing prices have increased dramatically in the Portland area over the past decade. Estimates of homelessness in the region range between 6,000 and 12,000 people. In January 2019, officials counted 5,711 people experiencing homelessness in Clackamas, Multnomah and Washington counties. Additionally, the Oregon Department of Education counted more than 7,000 students who experienced homelessness in the 2018 school year in Metro-area school districts. These reports undercount people experiencing homelessness while staying with a friend or family, or living in vehicles.

In recent years, more people are experiencing 'chronic' or prolonged homelessness. Approximately 3,123 to 4,935 people in the region experience homelessness related to complex and disabling conditions.

Additionally, Black, Indigenous and People of Color (BIPOC) disproportionately experience homelessness. BIPOC make up 21% of the total population in the tri-county area but comprise 31% of the homeless population. More specifically, Black and Indigenous people make up 5% of the total population but comprise over 20% of the homeless population.

The HereTogether coalition, a broad group of service providers, business leaders and advocates worked over the course of the last two years to develop the Regional Supportive Housing Services measure. As a broad coalition they identified the regional supportive housing need, developed programmatic and taxation strategies, engaged communities and built broad consensus for their programmatic and governance framework. With the support of elected leadership in Clackamas, Multnomah and Washington counties, they approached Metro in the Fall of 2019 requesting that Metro refer a measure to the region's voters. In February 2020, the Metro Council unanimously referred the measure to voters and the voters passed the measure with 58% support in May 2020.

## **ATTACHMENTS**

- Ordinance 20-1452, For the Purpose of Adding a New Title XI to the Metro Code and a New Chapter 11.01 "Supportive Housing Services Program" within that Title; and
- Ordinance 20-1453, For the Purpose of Adding a New Metro Code Section 2.19.270 Establishing a Supportive Housing Services Regional Oversight Committee; and
- Ordinance 20-1454, For the Purpose of Amending Metro Code Title VII to Add New Chapters 7.05 "Income Tax Administration for Personal and Business Taxes", 7.06 "Personal Income Tax", and 7.07 "Business Income Tax"; and
- Resolution 20-5148 to adopt the Supportive Housing Services work plan