



600 NE Grand Ave.  
Portland, OR 97232-2736

## Council meeting agenda

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**Thursday, September 9, 2021**

**10:00 AM**

**<https://zoom.us/j/615079992> or  
**888-475-4499 (toll free)****

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Please note: To limit the spread of COVID-19, Metro Regional Center is now closed to the public. This meeting will be held electronically.

You can join the meeting on your computer or other device by using this link:  
<https://zoom.us/j/615079992> or 888-475-4499 (toll free).

If you wish to attend the meeting, but do not have the ability to attend by phone or computer, please contact the Legislative Coordinator at least 24 hours before the noticed meeting time by phone at 503-797-1916 or email at [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov).

### **1. Call to Order and Roll Call**

### **2. Public Communication**

Public comment may be submitted in writing and will also be heard by electronic communication (video conference or telephone). Written comments should be submitted electronically by emailing [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Written comments received by 4:00p.m on the day before the meeting will be provided to the council prior to the meeting.

Those wishing to testify orally are encouraged to sign up in advance by either: (a) contacting the legislative coordinator by phone at 503-797-1916 and providing your name and the agenda item on which you wish to testify; or (b) registering by email by sending your name and the agenda item on which you wish to testify to [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Those requesting to comment during the meeting can do so by using the "Raise Hand" feature in Zoom or emailing the legislative coordinator at [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Individuals will have three minutes to testify unless otherwise stated at the meeting.

### **3. Consent Agenda**

- 3.1 Consideration of the Council Meeting minutes for July 08, 2021.

[21-5583](#)

Attachments: [070821c+cw](#)

- 3.2 Resolution No. 21-5200, For the Purpose of Amending the Time for Metro Council's Work Sessions and Business Meetings [RES 21-5200](#)
- Attachments: [Resolution No. 21-5200](#)  
[Staff Report](#)

**4. Resolutions**

- 4.1 Resolution No. 21-5194, For the Purpose of Adopting the 2025-2027 Regional Flexible funds Program Direction for the Portland Metropolitan Area [RES 21-5194](#)
- Presenter(s): Daniel Kaempff, Metro
- Attachments: [Resolution No. 21-5194](#)  
[Exhibit A to Resolution No. 21-5194](#)  
[Staff Report](#)

**5. Ordinances (First Reading and Public Hearing)**

- 5.1 Ordinance No. 21-1464, For the Purpose of Annexing to the Metro District Boundary Approximately 1.82 Acres Located at 7115 NW Kaiser Road in the North Bethany Area of Washington County [ORD 21-1464](#)
- Presenter(s): Tim O'Brien (he/him), Metro
- Attachments: [Ordinance No. 21-1464](#)  
[Exhibit A](#)  
[Staff Report](#)  
[Attachment 1](#)

**5.1.1 Public Hearing for Ordinance No. 21-1464**

- 5.2 Ordinance No. 21-1465, For the Purpose of Amending Metro Code Chapters 7.05, 7.06 and 7.07 to Add Certain Clarifications and Make Housekeeping Changes [ORD 21-1465](#)
- Presenter(s): Rachael Lembo (she/her), Metro
- Attachments: [Ordinance No. 21-1465](#)  
[Exhibit A to Ordinance No. 21-1465](#)  
[Exhibit B to Ordinance No. 21-1465](#)  
[Exhibit C to Ordinance No. 21-1465](#)  
[Staff Report](#)
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5.2.1

Public Hearing for Ordinance No. 21-1465

6. Councilor Communication
7. Chief Operating Officer Communication
8. Adjourn

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### Thông báo về sự Metro không kỳ thị của

Metro tôn trọng dân quyền. Muốn biết thêm thông tin về chương trình dân quyền của Metro, hoặc muốn lấy đơn khiếu nại về sự kỳ thị, xin xem trong [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Nếu quý vị cần thông dịch viên ra dấu bằng tay, trợ giúp về tiếp xúc hay ngôn ngữ, xin gọi số 503-797-1700 (từ 8 giờ sáng đến 5 giờ chiều vào những ngày thường) trước buổi họp 5 ngày làm việc.

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### Metro 的不歧视公告

尊重民權。欲瞭解Metro民權計畫的詳情，或獲取歧視投訴表，請瀏覽網站 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)。如果您需要口譯方可參加公共會議，請在會議召開前5個營業日撥打503-797-1700（工作日上午8點至下午5點），以便我們滿足您的要求。

### Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 galka hore illaa 5 galka dambe maalmaha shaqada) shan maalmaha shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

### Metro의 차별 금지 관련 통지서

Metro의 시민권 프로그램에 대한 정보 또는 차별 항의서 양식을 얻으려면, 또는 차별에 대한 불만을 신고 할 수 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). 당신의 언어 지원이 필요한 경우, 회의에 앞서 5 영업일 (오후 5시 주중에 오전 8시) 503-797-1700를 호출합니다.

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### សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានកម្មប្រតិបត្តិការរើសអើងសម្រាប់សេចក្តីណែនាំ [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

### إشعار بعدم التمييز من Metro

تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يُرجى زيارة الموقع الإلكتروني [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

### Paunawa ng Metro sa kawalan ng diskriminasyon

Iginagalang ng Metro ang mga karapatang sibil. Para sa impormasyon tungkol sa programa ng Metro sa mga karapatang sibil, o upang makakuha ng porma ng reklamo sa diskriminasyon, bisitahin ang [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Kung kailangan ninyo ng interpreter ng wika sa isang pampublikong pulong, tumawag sa 503-797-1700 (8 a.m. hanggang 5 p.m. Lunes hanggang Biyernes) lima araw ng trabaho bago ang pulong upang mapagbigyan ang inyong kahilingan.

### Notificación de no discriminación de Metro

Metro respeta los derechos civiles. Para obtener información sobre el programa de derechos civiles de Metro o para obtener un formulario de reclamo por discriminación, ingrese a [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Si necesita asistencia con el idioma, llame al 503-797-1700 (de 8:00 a. m. a 5:00 p. m. los días de semana) 5 días laborales antes de la asamblea.

### Уведомление о недопущении дискриминации от Metro

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### Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev sawv ntov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntawm lub rooj sib tham.

**Television schedule for Metro Council meetings**

|   |  |
|---|--|
| <p><b>Clackamas, Multnomah and Washington counties, and Vancouver, WA</b><br/> Channel 30 – Community Access Network<br/> <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a><br/> <i>Ph:</i> 503-629-8534<br/> Call or visit web site for program times.</p> | <p><b>Portland</b><br/> Channel 30 – Portland Community Media<br/> <i>Web site:</i> <a href="http://www.pcmtv.org">www.pcmtv.org</a><br/> <i>Ph:</i> 503-288-1515<br/> Call or visit web site for program times.</p>     |
| <p><b>Gresham</b><br/> Channel 30 - MCTV<br/> <i>Web site:</i> <a href="http://www.metroeast.org">www.metroeast.org</a><br/> <i>Ph:</i> 503-491-7636<br/> Call or visit web site for program times.</p>   | <p><b>Washington County and West Linn</b><br/> Channel 30– TVC TV<br/> <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a><br/> <i>Ph:</i> 503-629-8534<br/> Call or visit web site for program times.</p> |
| <p><b>Oregon City and Gladstone</b><br/> Channel 28 – Willamette Falls Television<br/> <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a><br/> <i>Ph:</i> 503-650-0275<br/> Call or visit web site for program times.</p>                   |  |

**PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.** Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities.

Agenda Item No. 3.1

**Consideration of the Council meeting minutes for July 08, 2021**  
*Consent Agenda*

Metro Council Meeting  
Thursday, September 09, 2021

# **Metro**

*600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov*



**Metro**

## **Minutes**

**Thursday, July 8, 2021**

**2:00 PM**

**This Council Meeting will adjourn to a Work Session.**

**<https://zoom.us/j/615079992> or 888-475-4499 (toll free)**

**Council meeting**

**1. Call to Order and Roll Call**

Deputy Council President Shirley Craddick called the Metro Council Meeting call to order at: 2:02 p.m.

**Present:** 6 - Councilor Shirley Craddick, Councilor Bob Stacey, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, and Councilor Gerritt Rosenthal

**Excused:** 1 - Council President Lynn Peterson

**2. Public Communication**

Deputy Council President Craddick opened the meeting to members of the public wanting to testify on a non-agenda items.

Seeing no public comment, Deputy Council President Craddick moved on to Resolution No. 21-5193.

**3. Consent Agenda**

**A motion was made by Councilor Nolan, seconded by Councilor Stacey, to adopt items on the consent agenda. The motion passed by the following vote:**

**Aye:** 6 - Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

**Excused:** 1 - Council President Peterson

- 3.1 Consideration of the Council Meeting minutes for June 10, 2021.
- 3.2 Resolution 21-5186, For the Purpose of Appointing New Members to the Public Engagement Review Committee
- 3.3 Resolution No. 21-5182, For the Purpose of Amending the 2021-24 Metropolitan Transportation Improvement Program (MTIP) to Complete the Reprogramming of Unified Planning Work Program (UPWP) Annual Program Estimates Impacting Metro, Plus Amend, Add, or Cancel Several Projects Impacting ODOT and Trimet to Address their Next Federal Approval Step (JN21-11-JUN)

**4. Resolutions**



- 4.1 Resolution No. 21-5193, For the Purpose of Ratifying the 2021-2025 Collective Bargaining Agreement Between AFSCME 3580 and Metro

Presenter(s): Julio Garcia, Metro  
Elizabeth Arnott, Metro

Deputy Council President Craddick introduced Metro Human Resources Director Julio Garcia (he/him) and Elizabeth Arnott (she/her) to present Resolution No. 21-5193.

Julio Garcia and Elizabeth Arnott provided an overview of the AFSCME (American Federation of State, County and Municipal Employee) collective bargaining agreement.

Human Resources staff reviewed the following changes to the AFSCME contract: Wages & cost of living adjustments, Job classifications, Time off policy, Retirement policy and Current policies that needed further clarification

Additionally, Staff invited Metro's Chief Financial Officer Brian Kennedy to review the financial impact of the AFSCME contract updates.

#### *Council Discussion*

Councilor Rosenthal asked staff to clarify the following updates: Will the remote work policy include specific protocols on how to attend meetings? Why was excessive sick leave abuse updated in the contract?

Councilor Lewis asked staff to provide an overview of the post contract work that needs to be done.

Councilor Nolan thanked staff, Metro AFSCME union members and AFSCME negotiation team on the work they accomplished in the collective bargaining agreement.

Councilor Gonzalez thanked staff for their work and his appreciation of section 6.13 of the bargaining agreement. Section 6.13 outlines policies on how to compensate BIPOC and other Metro employees who are asked to use their lived experience and language skills outside of their day-to-day responsibilities.

Councilor Stacey expressed his appreciation for all of the hard work that went into negotiations.

Deputy Council President Craddick shared her appreciation for the creativity and teamwork that came into updating policies. Furthermore, she asked staff to come back to Council in the future to review updates to the PER's (Public Employee's Retirement System) liability policies?

Seeing no further discussion on the topic, Council President Peterson moved on to the next agenda item: Ordinance No. 21-1463

**A motion was made by Councilor Nolan, seconded by Councilor Gonzalez, that this item be adopted. The motion passed by the following vote:**

**Aye:** 6 - Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

**Excused:** 1 - Council President Peterson

## 5. Ordinances (Second Reading)

- 5.1 Ordinance No. 21-1463, For the Purpose of Annexing to the Metro District Boundary Approximately 9.78 Acres Located West of SW Roy Rogers Road in Tigard

Presenter(s): Tim O'Brien, Metro

Deputy Council President Craddick introduced Metro Attorney Carrie MacLaren (she/her) to answer any

questions on Ordinance No. 21-1463.

*Council Discussion*

There was none.

**A motion was made by Councilor Rosenthal, seconded by Councilor Stacey, that this item be adopted. The motion passed by the following vote:**

**Aye:** 6 - Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

**Excused:** 1 - Council President Peterson

**6. Adjourn to Work Session**

Seeing no further business, Deputy Council President Craddick adjourned the Metro Council meeting and moved on to the Metro Council Work Session.

**1. Call to Order and Roll Call**

Deputy Council President Shirley Craddick called the Metro Council Work Session to order at: 2:50 p.m.

**Present:** 6 - Councilor Shirley Craddick, Councilor Bob Stacey, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, and Councilor Gerritt Rosenthal

**Excused:** 1 - Council President Lynn Peterson

**2. Work Session Topics:**

2.1 Update Wet Waste Tonnage Allocations Public Engagement Process

Presenter(s): Molly Vogt, Metro

Deputy Council President Craddick introduced Metro COO Marissa Madrigal (she/her/ella) and Molly Vogt (she/her) to present the: *Wet Waste Tonnage Allocations-Draft 2022 criteria and implementation plan*

Marissa Madrigal reviewed the past work Metro has done on wet waste tonnage allocations, the project goals Metro

Council laid out for staff and the implementation timeline of the project.

Molly Vogt reviewed the progress that has been made and where staff is in the public engagement process. Additionally, Molly reviewed the key changes to the waste tonnage allocation policy for the 2022 plan. She highlighted that staff specifically focused on advancing sustainability and affordability when developing the 2022 plan.

Furthermore, Molly reviewed the feedback and suggestions from the Regional Waste Advisory Committee, private industry and three local governments on the proposed 2022 implementation plan.

Based off of Councilor feedback, Shane Abma (he/him) explained that if Councilor's wanted to redraft components of the plan they would have to have another public hearing.

#### *Council Discussion*

Councilor Gonzalez thanked staff and jurisdictional partners for their work and input on the Waste Tonnage Allocation plan. Furthermore, Councilor Gonzalez stressed the importance of evaluating living wages and good benefits. He urged staff to try to prioritize looking at total compensation not just base wage when evaluating living wages.

Councilor Rosenthal asked staff why the waste tonnage rate was set to 5% last year but this year is set to Metro's rate cap of 17%. Additionally, Councilor Rosenthal asked staff to review what happens when a hauler does not meet the goals under the new waste tonnage allocation plan. He asked staff to review the capacity of the transfer stations to provide waste removal services if one of those stations goes out of business.

Councilor Nolan raised her concern about asking private businesses to pay their workers Metro's definition of a living wage without analyzing what the current market rates are for paying workers. Furthermore, she expressed her desire to remove the living wage criteria if staff does not determine a rate based off of the labor market as a whole compared to the current rate which is based off of the rental market.

Councilor Lewis expressed her concern with focusing on wages rather than total compensation because it could incentivize businesses to cut benefits, such as healthcare, in order to pay workers a higher wage.

Deputy Council President Craddick asked staff if the criteria will adapt over time and to review the evaluation process of transfer station applications.

Councilor's expressed their concerns and thoughts on the living wage criteria and determined that staff should revisit this component of the plan in order to reflect the desires of workers and Metro's values. Furthermore, Councilors requested that staff ensure that there is proper time for Council to review and approve any modifications to the plan.

### **3. Chief Operating Officer Communication**

Metro Chief Operating Officer Marissa Madrigal provided an update on the following events or items: Updates to Covid-19 safety guidelines for Metro Venues, Metro Parks and Upcoming Metro sponsored events

### **4. Councilor Communication**

There was none.

### **5. Adjourn**

Seeing no further business, Deputy Council President Shirley Craddick adjourned the Metro Council Work Session at 3:50 p.m.

Respectfully submitted,

*Pilar Karlin*

Pilar Karlin, Council Policy Assistant

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JULY 08, 2021**

| <b>ITEM</b> | <b>DOCUMENT TYPE</b> | <b>DOC DATE</b> | <b>DOCUMENT DESCRIPTION</b>      | <b>DOCUMENT No.</b> |
|-------------|----------------------|-----------------|----------------------------------|---------------------|
| <b>2.0</b>  | Powerpoint           | 07/08/21        | AFSCME Presentation              | 070821c-01          |
| <b>2.1</b>  | Powerpoint           | 07/08/21        | Waste Tonnage Allocation Updates | 070821cw-01         |

Agenda Item No. 3.2

**Resolution No. 21-5200**, For the Purpose of Amending the Time for Council's Work Sessions and Business Meetings

*Consent Agenda*

Metro Council Meeting  
Thursday, September 09, 2021



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE TIME ) RESOLUTION NO. 21-5200  
FOR METRO COUNCIL WORK SESSIONS AND )  
BUSINESS MEETINGS ) Introduced by Chief Operating Officer  
) Marissa Madrigal in concurrence with  
) Council President Lynn Peterson

WHEREAS, Metro Code Section 2.01.030 requires the Council establish regular meeting dates and times by resolution; now therefore

BE IT RESOLVED that the Metro Council hereby repeals the rule with regard to the time of regular council meetings established by Resolution No. 13-4447 and, pursuant to Metro Code Section 2.01.030, changes the time of the meetings from 2:00 p.m. to 10:30 a.m. as follows:

- 1. The Metro Council will meet in regular session every Thursday, beginning at 10:30am., unless otherwise arranged; and
- 2. The Metro Council will meet in work session, conducted on as as-needed basis, on Tuesdays, beginning at 10:30 a.m., unless otherwise arranged.

ADOPTED by the Metro Council this 9th day of September, 2021.

\_\_\_\_\_  
Lynn Peterson, Council President

Approved as to Form:

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

IN CONSIDERATION OF RESOLUTION NO. 21-5200 FOR THE PURPOSE OF AMENDING THE TIME FOR METRO COUNCIL WORK SESSIONS AND BUSINESS MEETINGS

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Date: 08/31/2021  
Department: Council  
Meeting Date: 9/9/2021

Prepared by: Jaye Cromwell, Council Office

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**ISSUE STATEMENT**

The Metro Council currently abides by the rules and procedures outlined by Resolution 13-4447, For the Purpose of Adopting Rules and Establishing Procedures Relating to the Conduct of Council Business, which establishes 2:00 p.m. as the start time for regular Council meetings. The COVID-19 pandemic has decreased the available after school childcare options for school age children, including on-site childcare options. The current Council meeting time of 2:00 p.m. now conflicts with most school pickup times and may create extreme difficulties for members of the public, Metro staff and others who must or wish to participate in Council work sessions and meetings.

**ACTION REQUESTED**

Seeking Council approval of Resolution 21-5200 to adopt the new Council meeting time of 10:30 a.m. on Tuesdays and Thursdays.

**IDENTIFIED POLICY OUTCOMES**

COO Madrigal and President Peterson have requested a time change of Council meetings from 2:00 p.m. to 10:30 a.m. (with an anticipated ending time of 1:00 p.m.). This change supports members of the public, Metro employees and employees of our partner agencies and businesses with school-age children who must choose between family obligations and participating in Metro Council meetings.

POLICY QUESTION(S) None.

**POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Council can consider retaining the current time of Metro meetings or choosing a different time.

**STAFF RECOMMENDATIONS**

Staff recommends adoption of Resolution 21-5200.

**STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**  
**LEGAL ANTECEDANTS**

Metro Section 2.01.030 establishes that Council will meet regularly by setting dates and times for regular council meetings by a resolution adopted by the Council.

Metro Code Section 2.01.090 requires the Council by resolution to adopt rules of procedure governing conduct of debate on matters considered by the Council.

Resolution No. 95-2078, amended by Resolution No. 95-2160, established Council rules and procedures which governed debate, receipt of communications from the public, introduction and consideration of ordinances and resolutions, the general order of business, criteria for the consent agenda and other issues.

Resolution No. 13-4447 repealed Resolution Nos. 95-2078 and No. 95-2160 and established Council rules and procedures which governed debate, receipt of communications from the public, introduction and consideration of ordinances and resolutions, the general order of business, criteria for the consent agenda and other issues.

Agenda Item No. 4.1

**Resolution No. 21-5194**, For the Purpose of Adopting the 2025-2027 Regional Flexible funds  
Program Direction for the Portland Metropolitan Area

*Resolutions*

Metro Council Meeting  
Thursday, September 09, 2021

BEFORE THE METRO COUNCIL

|                                       |   |                                       |
|---------------------------------------|---|---------------------------------------|
| FOR THE PURPOSE OF ADOPTING THE 2025- | ) | RESOLUTION NO. 21-5194                |
| 2027 REGIONAL FLEXIBLE FUNDS PROGRAM  | ) |                                       |
| DIRECTION FOR THE PORTLAND            | ) | Introduced by Chief Operating Officer |
| METROPOLITAN AREA                     | ) | Marissa Madrigal in concurrence with  |
|                                       | ) | Council President Lynn Peterson       |
|                                       | ) |                                       |

WHEREAS, the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) are authorized per Code of Federal Regulations Title 23 Section 450.306 and 450.326 to develop and implement a long-range metropolitan transportation plan and four-year investment program in a cooperative manner with the regions stakeholders; and

WHEREAS, the Portland metropolitan region periodically conducts a process to select projects and programs of regional significance in which to invest the region’s allotment of federal surface transportation funds, known as the Regional Flexible Funds Allocation (RFFA); and

WHEREAS, the RFFA is one element of the Metropolitan Transportation Improvement Program (MTIP), which reports on the performance and programming of all federal surface transportation funds to be spent in the Portland metropolitan region; and

WHEREAS, the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) are authorized per Code of Federal Regulations Title 23, Section 450.324 to allocate these funds to projects and programs in the metropolitan region and preceding the allocation, have developed a program direction statement defining how the region should consider investments for federal fiscal years 2025-2027 for the regional flexible funds; and

WHEREAS, the Metro Council and JPACT adopted an updated Regional Transportation Plan (RTP) in December 2018; and

WHEREAS, the three-year process to create the 2018 RTP engaged stakeholders throughout to the region to develop the goals, objectives, and policies for the long-range transportation plan and the associated transportation investment priorities; and

WHEREAS, the adopted 2018 RTP specified four regional investment priorities to focus on in the near-term with the region’s transportation funding: Equity, Safety, Climate and Congestion; and

WHEREAS, three public workshops were held in development of the 2025-2027 RFFA Program Direction to gather input from a broad range of perspectives on prioritizing the regional transportation funding; and

WHEREAS, input has been sought and received from the Transportation Policy Alternatives Committee as well as JPACT on the updated Program Direction; and

WHEREAS, using input from the workshops, TPAC, in their June 4, 2021 meeting, recommended the draft 2025-2027 RFFA Program Direction to JPACT for approval, and JPACT, in their July 15, 2021 meeting approved TPAC’s recommendation; now therefore,

BE IT RESOLVED that the Metro Council adopt the 2025-2027 Regional Flexible Funds Allocation Program Direction.

ADOPTED by the Metro Council this 9th day of September 2021.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



# DRAFT 2025-2027 Regional Flexible Funds Allocation Program Direction

Resolution 21-5194

Approved by JPACT July 15, 2021

**Nondiscrimination Notice to the Public**

Metro hereby gives public notice that it is the policy of the Metro Council to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, Executive Order 12898 on Environmental Justice and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, sex, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Metro receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Metro. Any such complaint must be in writing and filed the Metro's Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. For more information, or to obtain a Title VI Discrimination Complaint Form, see the web site at [www.oregonmetro.gov](http://www.oregonmetro.gov) or call 503-797-1536.



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## INTRODUCTION

As the federally designated Metropolitan Planning Organization (MPO) for the greater Portland, Oregon area, Metro is responsible for administering federal transportation dollars over which the region has allocation authority. Every three years, Metro conducts a process to select specific investments in the region's transportation system to be funded with these dollars. This process is known as the Regional Flexible Funds Allocation (RFFA). Allocating these funds is one of several activities required of MPOs, others being the development of the Regional Transportation Plan (RTP), the Metropolitan Transportation Improvement Program (MTIP), and the Unified Planning Work Plan (UPWP).

Through the RFFA process, the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council consider how the available funding can be used strategically to address needs identified through the RTP. The RTP establishes the vision, goals, and objectives for the Portland region's transportation system, as well as defines performance measures and an investment strategy to ensure progress is made towards creating the envisioned system. In particular, the RTP provides the policy framework to guide how specific sources of transportation funds should be coordinated in order to invest in all parts of the planned system.

JPACT and Metro Council adopted the most recent update of the RTP at the end of 2018. In the three years spent developing the 2018 RTP, an extensive outreach process resulted in nearly 19,000 individual points of contact with residents, community organizations, businesses, and elected officials.

Through this work with the community and policymakers, several investment priorities emerged. These priorities implement the 2040 Growth Concept by focusing on "moving people and goods, providing access, and helping to create and connect places." Of these priorities, Metro Council specified four as the main near-term capital and program investment priorities of the RTP: Equity, Safety, Climate and Congestion Relief.<sup>1</sup> These four priorities represent the framework for how funding is to be prioritized through the 2025-2027 RFFA.

Along with adopting the 2018 RTP, JPACT and Metro Council also adopted new modal and topical strategies for Transportation Safety, Freight, Transit and Emerging Technology. These strategies more fully articulate the integrated multi-modal regional transportation system and investments needed to improve the existing system, and complement the Regional Travel Options Strategy (2018), Regional Active Transportation Plan (2014), Climate Smart Strategy (2014) and Regional Transportation System Management and Operations Action Plan (2010). Collectively, these planning policy documents provide guidance for how the region can thoughtfully direct funding through the RFFA process to advance these four near-term investment priorities.

The 2025-2027 RFFA Program Direction builds upon previous RFFA policy established by JPACT and Metro Council. It has been updated to align with new regional policy from the 2018 RTP and the supportive modal and topical strategies, specifically focusing on the four investment priorities noted above. It continues the two-step funding approach adopted in 2011 for the 2014-2015 allocation cycle, which directs funding towards region-wide investments and supports construction of capital projects in specific focus areas.

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<sup>1</sup> Metro Ordinance 18-1421

Funding allocated in Step 1 represents the region’s ongoing commitments to fund portions of the transportation system that are critical to following through on RTP-identified goals and objectives. Step 1 investments support federal, state, and regional requirements for building a multi-modal transportation system, meeting federal air quality regulations, and reducing greenhouse gas emissions from vehicles, per mandates from the state.

New in this RFFA cycle is an updated Step 2 capital projects category. A series of three workshops were held in March and April 2021 to gather input from regional stakeholders on what updates they felt were critical to addressing the current needs of the transportation system. As the current two-step funding approach has been in use since 2011, stakeholders indicated that the region should consider updating the existing Step 2 project funding categories: Active Transportation and Complete Streets, and Freight and Economic Development Initiatives. In response, a single capital projects category is adopted through this Program Direction that focuses on projects that improve the system in multiple ways.

### REGIONAL SIX DESIRED OUTCOMES

In 2008, Metro Council and MPAC adopted the Six Desired Outcomes to form the framework of a performance-based approach for policy and investment decisions. Those outcomes are:

- **Equity:** The benefits and burdens of growth and change are distributed equitably
- **Vibrant communities:** People live and work in vibrant communities where their everyday needs are easily accessible
- **Economic prosperity:** Current and future residents benefit from the region’s sustained economic competitiveness and prosperity
- **Safe and reliable transportation:** People have safe and reliable transportation choices that enhance their quality of life
- **Clean air and water:** Current and future generations enjoy clean air, clean water, and healthy ecosystems
- **Climate Leadership:** The region is a leader in minimizing contributions to global warming



Six desired outcomes for greater Portland – Adopted by the Metro Council in 2008.

The Six Desired Outcomes shape the way in which all regional plans and policies reflect and orient towards achieving the desired outcomes. The 2018 RTP identifies needed next steps to achieve each of the Six Desired Outcomes for the region’s transportation system.

### 2018 REGIONAL TRANSPORTATION PLAN INVESTMENT PRIORITIES

The 2018 RTP serves as the blueprint for the regional transportation system for the next 25 years. It identifies 11 specific goals, 43 related objectives and four priorities that define the region’s aspirational system and describes a strategy for making near-term investments intended to make progress towards that system.

RTP Chapter 2 lays out this vision and includes nine system performance targets to provide a basis for measuring expected performance of the plan in the long-term. Chapter 6.2 provides specific priorities to guide investments to demonstrate the region’s actions are following its commitments

and demonstrate progress towards the performance targets. Projects funded through the 2025-2027 RFFA are to align with the RTP investment priorities identified in Chapter 6.2.

These near-term investment priorities emerged from a three-year discussion and identification of the region's most urgent transportation needs by regional policymakers. They guided the development and refinement of the 2018 RTP projects and programs list and reflect direction from JPACT and Metro Council to prioritize near-term investments to address these priorities.

The four RTP Investment Priorities are:

- **Equity:** Reduce barriers and disparities faced by historically marginalized communities, particularly for communities of color and people with low income
- **Safety:** Reduce fatal and severe injury crashes to move the region as quickly as possible toward Vision Zero, particularly for communities of color and other historically marginalized communities
- **Climate Change:** Reduce greenhouse gas emissions from cars and small trucks to reduce the impacts of climate change, particularly for communities of color and other historically marginalized communities
- **Congestion:** Manage travel demand and increase use of travel options to make travel more reliable on the region's busiest roadways, particularly for communities of color and other historically marginalized communities

**Figure 1: 2018 RTP Investment Priorities**



The 2018 RTP determined that the Six Desired Outcomes could best be achieved by making transportation investments focusing on these four priorities. The first of seven key investment recommendations states the following:

*“Make more near-term progress on key regional priorities – equity, safety, travel options, Climate Smart Strategy implementation and congestion. Advance projects that address these outcomes to the 10-year list to make travel safer, ease congestion, improve access to jobs and community places, attract jobs and businesses to the region, save households and businesses time and money, and reduce vehicle emissions.”<sup>2</sup>*

The 2018 RTP also resulted in updates to the plan’s aspirational performance targets. The performance targets are quantitative benchmarks used to assess the region’s progress in carrying out the RTP vision through its investment priorities. These performance targets are the highest order evaluation measures in the RTP performance-based policy framework – providing key criteria by which progress towards the plan goals can be assessed. The targets are listed in Table 1. A complete description of the performance targets is found in Chapter 2 of the 2018 RTP.

## REGIONAL TRANSPORTATION FINANCE APPROACH

Since May 2009, the region has followed a regional finance approach to direct how the transportation needs of the region are to be addressed by existing or potential transportation funding sources. JPACT developed this regional finance approach to provide a starting point for the various funding programs or sources that are addressed in the MTIP and State Transportation Improvement Program (STIP).

The approach identifies funding mechanisms agencies use and a regional strategy for sources to be pursued to address unmet needs of the different elements of transportation system in the region. The approach has been utilized in the development of RFFA policies since the 2010-2013 MTIP cycle and updated as needed to reflect current planning policy. Additionally, as other available funding opportunities have emerged since the 2010-2013 MTIP cycle, the regional finance approach has been a starting point for informing a regionally coordinated set of priorities to pursue

**Table 1: Regional Transportation Plan Performance Targets**

|   |  |  |
|---|--|--|
| 1 |    | <b>AFFORDABILITY</b> Reduce the combined housing and transportation expenditure for lower-income households by 25%, compared to 2015                                     |
| 2 |    | <b>SAFETY</b> Eliminate transportation fatalities and serious injuries for all users by 2035, with a 50% reduction by 2025 and a 16% reduction by 2020, compared to 2015 |
| 3 |    | <b>MULTIMODAL TRAVEL</b> Reduce vehicle miles traveled per person by 10%, compared to 2015   |
| 4 |    | <b>MODE SHARE</b> Triple walking, biking and transit mode shares, compared to 2015   |
| 5 |    | <b>SYSTEM COMPLETION</b> Complete 100% of the regional network of sidewalks, bikeways and trails   |
| 6 |  | <b>CONGESTION</b> Meet the Interim Regional Mobility Policy for throughways, arterials and the regional freight network  |
| 7 |  | <b>FREIGHT DELAY</b> Reduce vehicle hours of delay per truck trip by 10%, compared to 2040 No Build  |
| 8 |  | <b>CLIMATE CHANGE</b> Reduce per capita greenhouse gas emissions from cars and small trucks by 20% by 2035 and 25% by 2040, compared to 2005                             |
| 9 |  | <b>CLEAN AIR</b> Maintain or reduce air pollution from mobile sources, compared to 2015  |

<sup>2</sup> 2018 RTP, Chapter 6, Table 6.2



those other funding opportunities. Recognizing the regional transportation finance approach has influenced the development of a coordinated regional list of capital investment priorities, tailored to the context of the funding opportunity – such as the 2020 regional transportation funding measure and the congressional request of regional priorities for appropriations earmarks – the 2025-2027 RFFA Program Direction follows the core principles of the regional finance approach.<sup>3</sup>

Uses for regional flexible funds, as defined in the regional transportation finance approach include:<sup>4</sup>

- Active Transportation
- Arterial Expansion, Improvements, and Reconstruction<sup>5</sup>
- Throughway Expansion<sup>6</sup>
- High-capacity Transit Expansion
- Transportation System Management and Operations
- Regional Travel Options
- Transit Oriented Development

### REGIONAL FLEXIBLE FUNDS ALLOCATION OBJECTIVES

The following objectives define how the RFFA process should be conducted and what outcomes should be achieved with the overall allocation process.

1. Select projects from throughout the region; however, consistent with federal rules, there is no sub-allocation formula or commitment to a particular distribution of funds to any sub-area of the region.
2. Honor previous funding commitments made by JPACT and the Metro Council.
3. Address air quality requirements by ensuring State Implementation Plan for air quality requirements are met and that an adequate pool of CMAQ-eligible projects is available for funding.
4. Achieve multiple transportation policy objectives.
5. Allow use of funding for project development and local match of large-scale projects (greater than \$10 million) that compete well in addressing policy objectives when there is a strong potential to leverage other sources of discretionary funding.
6. Encourage the application of projects that efficiently and cost-effectively make use of federal funds.
7. Recognize the difference in transportation infrastructure investment needs relative to an areas stage of development (developed, developing, undeveloped) consistent with RTP Table 2.2.
8. Identify project delivery performance issues that may impact ability to complete a project on time and on budget.

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<sup>3</sup> See Metro Council Resolution 16-4702.

<sup>4</sup> Most recent regional transportation finance approach is from the 2021-2024 MTIP policy.

<sup>5</sup> Limited to arterial freight facilities for ITS, small capital projects, and project development.

<sup>6</sup> Limited to project development with large discretionary funding leverage opportunities to address multiple transportation issues around the mainline facilities, focusing on the multi-modal portions of these projects that are on the regional arterial network adjacent to the freeway interchange.

9. Ensure agencies have qualifications for leading federal aid transportation projects.
10. Identify opportunities for leveraging, coordinating, and collaboration.

Per RTP Equity Policy 7, projects and programs funded through the RFFA should demonstrate support of family-wage job opportunities and a diverse construction workforce through inclusive hiring practices and contracting opportunities for investments in the transportation system.

### 2025-2027 REGIONAL FLEXIBLE FUNDS STRUCTURE

The 2025-2027 RFFA follows the two-step framework the region has followed starting with the 2014-2015 allocation process. This framework was adopted to ensure the region is investing in the system in accordance with RTP direction and the RFFA objectives.

A total of \$142,350,000 is projected to be allocated in the 2025-2027 federal fiscal years. Funding amounts for each of the funding areas is as shown in Table 2 below.

**Table 2: Total 2025-2027 Regional Flexible Funds**

|   |                      |
|---|----------------------|
| <b>Step 1A:</b> Transit & Project Development Bond Repayment Commitment | \$65,280,000         |
| <b>Step 1B:</b> Region-wide Program Investments, Planning               | \$35,820,186         |
| <b>Step 2:</b> Capital Investments                                      | \$41,249,814         |
| <b>Total 2025-2027 RFFA</b>   | <b>\$142,350,000</b> |

Step 1 consists of two funding focus areas. Step 1A repays bonds issued to develop and construct key elements of the region’s multi-modal system. Step 1B targets funding towards key system investment needs, ensures the region has capacity to follow federal planning requirements and can respond to and plan for future system opportunities.

Step 2 provides capital project funding to develop and construct improvements to the regional system. The focus of these project funds is on completing gaps or improving the active transportation system and making strategic improvements to support a healthy economy and help freight move more easily.

If a federal authorization bill is not completed by the time of the release of the Step 2 call for projects or the time to recommend projects for selection, the use of an “illustrative list of projects” may be considered as a means of managing the uncertainty of funding levels and ensuring the region is preparing an adequate pipeline of projects to prepare to obligate available funding as quickly as possible.



## Step 1A – Bond Repayment Commitments



Regional flexible funds have been used to help construct the region's high-capacity transit system. Since 1998, TriMet has issued bonds to pay for project development and capital construction costs of high-capacity transit line construction, based on a regional commitment of flexible funds to repay the bonded debt. The region's current obligation to repay bond debt extends to 2034. This bond obligation covers investments in Green, Orange, and Southwest Corridor MAX lines, Division Transit Project, and the Eastside Streetcar Loop.

In the 2019-2021 RFFA process, JPACT and Metro Council directed regional funding to be used to develop a selected package of improvements to address regional active transportation needs, and freeway interchanges or arterials that were identified as significant system deficiencies, particularly in the areas of safety and freight delay.

Regional flexible funds were used in a manner consistent with the Regional Transportation Finance Approach that targets these funds to the connecting arterial portions of freeway interchange projects and Active Transportation projects. For projects coordinated with freeway mainline and associated interchange elements, flexible funds were invested as a part of a multi-agency approach to addressing multiple transportation issues around the mainline facilities and focused on the multi-modal portions of these projects that are on the regional arterial network adjacent to the freeway interchange.

The regional bond commitments through 2034 for transit and project development are shown below in Table 3. Funding to be allocated in the 2025-2027 RFFA cycle is highlighted in blue.

**Table 3: Regional bond repayment commitment schedule**

| Federal Fiscal year | Amount (millions) |
|---------------------|-------------------|
| 2025                | \$21.78*          |
| 2026                | \$21.76*          |
| 2027                | \$21.74*          |
| 2028                | \$17.28           |
| 2029                | \$17.26           |
| 2030                | \$17.24           |
| 2031                | \$17.22           |
| 2032                | \$17.19           |
| 2033                | \$17.17           |
| 2034                | \$17.15           |

\* Amount due in each of the three years of the 25-27 RFFA cycle

Bond repayment commitments for the 2025-2027 RFFA cycle are:

**Bond Repayment Commitment** **\$65,280,000**

**Step 1B – Region-wide program investments, MPO and regional planning**

**Region-wide program investments**

Three region-wide programs have been defined over time by their regional scope, program administration, and policy coordination, and a consistent allocation of regional flexible funds to support them. The three programs are:

- **Regional Travel Options/Safe Routes to School –** Grants to local partners that support public outreach and encouragement, to help people reduce automobile use and travel by transit, ridesharing, bicycling or walking, and to build a coordinated regional Safe Routes to School program
- **Transit Oriented Development –** Investments to help develop higher-density, affordable and mixed-use projects near transit, to increase the use of the region’s transit system and advance the Region 2040 Growth Concept
- **Transportation System Management and Operations –** Capital funding focused on improving the region’s transportation data, traffic signals, traveler information and other technological solutions to help move people and goods more safely, reliably, and efficiently.



Funding targets are set for the existing region-wide programs in this cycle based on their historical allocation levels which includes an annual increase to address increasing program costs and maintain purchasing power. The region-wide programs are reviewed in each RFFA cycle. A report was given to TPAC in their May 2021 meeting. The report provides the following information about each program:

- Program description – description of the program purpose and its major activities
- Regional Funding Strategy Context – description of why the program is appropriate for regional flexible funding, per the Regional Finance Approach
- Directly related RTP performance targets – description of how the program helps the region meet performance targets in the RTP
- Connection to other plans or strategies – description of how program investments are linked to addressing other planning requirements (for example, the State Implementation Plan for air quality, included as part of the strategy demonstrating the region can meet state mandated greenhouse gas reduction targets)
- Program strategic plan or recent planning work completed to date – description of how the strategic plan helps set priorities for implementation
- Program performance to date – description of specific accomplishments of the program
- Future activities – description of work to be conducted over the next three years
- Additional opportunities – description of priorities or activities the program would pursue given additional resources

Region-wide program investments for the 2025-2027 RFFA cycle are:

|   |                     |
|---|---------------------|
| <b>Regional Travel Options/Safe Routes to School (RTO/SRTS)</b> | <b>\$11,102,371</b> |
| <b>Transit Oriented Development (TOD)</b>                       | <b>\$11,806,111</b> |
| <b>Transportation System Management and Operations (TSMO)</b>   | <b>\$ 5,943,432</b> |

### **c. MPO, Freight, Economic Development, Corridor and System Planning**

Regional funds are used to support planning, analysis and management work required of an MPO. JPACT and Metro Council have directed these funds to be spent instead of collecting dues from each partner jurisdiction in the region as was done prior to 1992. Regional funds have also been directed towards continued planning work to further develop regional corridors, transit and freight networks, and to better understand the economic impacts of our transportation investments.

Planning commitments for the 2025-2027 RFFA cycle are:

|                                       |                     |
|---------------------------------------|---------------------|
| <b>MPO Planning (in lieu of dues)</b> | <b>\$ 4,730,789</b> |
| <b>Corridor and System Planning</b>   | <b>\$ 2,237,483</b> |

### **Step 2 – Capital Investments**

The 2025-2027 RFFA program direction incorporates a new Step 2 capital projects category. This new category updates the previous modal categories and funding targets in favor of a single category but maintains the same focus on improving the region’s active transportation network and supporting freight mobility and economic outcomes.

Existing practice is that JPACT and Metro Council desire that a strategic approach is followed to allocating Step 2 funds, including:

- A topically or geographically focused impact rather than an array of disconnected projects
- Achieves appreciable impacts on implementing a regional scale strategy given funding amount available
- Addresses specific outcomes utilizing the 2018 Regional Transportation Plan Performance Targets
- Prioritizes catalytic investments (leveraging large benefits or new funding)
- Positions the region to take advantage of federal and state funding opportunities as they arise

In the development of the 2025-2027 RFFA and following up on the input received from the 2022-24 RFFA retrospective, a series of stakeholder workshops was convened to advise JPACT and TPAC on how the regional funding could be directed in a manner that best reflects 2018 RTP investment priority direction. Participants were asked to provide proposed adjustments or changes to the existing RFFA program direction to better align it with RTP policy.



Through the workshop process participants indicated continued support for investment in projects that improve the region's active transportation system and support the region's economy, as has been the RFFA focus in prior funding cycles. But they also indicated that more flexibility in how projects could be conceived and evaluated could result in projects that achieve multiple outcomes and lead to better outcomes regarding the four RTP investment priorities and the nine performance targets.

### **Project development approach and technical evaluation criteria**

Workshop input indicated support to eliminate the Step 2 project categories of Active Transportation/Complete Streets and Freight/Economic Development and their associated funding targets (75%/25%). Participants supported a process that allows projects to be proposed of any mix of mode and function improvements identified as appropriate for the regional flexible funds through the Regional Transportation Finance Approach and that best advance the RTP Investment Priority categories.

The criteria shown below in Table 4 (center column) will be used in the technical evaluation for proposed Step 2 projects. The criteria illustrate how the region is investing in its stated priorities. Projects that perform well in the technical analysis will demonstrate significant and measurable improvements in each of these criteria.

**Table 4: Step 2 Project Technical Evaluation Criteria**

| 2018 Regional Transportation Plan Priorities <sup>7</sup>   | Outcome(s) Being Measured (Project Criteria) <sup>8</sup>  | Performance Measures to Consider <sup>9</sup>  |
|---|--|--|
| <p><b>Equity</b></p> <p><b>Reduce barriers and disparities</b> faced by historically marginalized communities, particularly for communities of color and people with low income.</p>  | <p>Increased accessibility</p> <p>Increased access to affordable travel options</p>  | <ul style="list-style-type: none"> <li>• Access to opportunity (jobs, school and other destinations people need to thrive)</li> <li>• Access to transit</li> <li>• Access to active transportation network/system completeness in Equity Focus Areas, near transit, and/or on high injury corridors and TSMO and TDM programs</li> </ul> |
| <p><b>Safety</b></p> <p><b>Reduce fatal and severe injury crashes</b> to move the region as quickly as possible toward Vision Zero, particularly for communities of color and other historically marginalized communities.</p>        | <p>Reduced fatal and serious injury crashes for all modes of travel</p>  | <ul style="list-style-type: none"> <li>• System completeness of bike, pedestrian networks in EFAs, near transit, on arterials, on regional freight routes and/or on high injury corridors and TSMO and TDM programs</li> <li>• VMT/capita</li> <li>• Multi-Modal Level of Service, LTS, ped crossing index</li> </ul>                    |
| <p><b>Climate Change</b></p> <p><b>Reduce greenhouse gas emissions</b> from cars and small trucks to reduce the impacts of climate change, particularly for communities of color and other historically marginalized communities.</p> | <p>Reduced emissions from vehicles</p> <p>Reduced drive alone trips</p>  | <ul style="list-style-type: none"> <li>• VMT/capita</li> <li>• System completeness of transit, bike, pedestrian networks in EFAs, near transit, on arterials and/or on high injury corridors and TSMO and TDM program</li> </ul>   |
| <p><b>Congestion</b></p> <p><b>Manage travel demand and increase use of travel options</b> to make travel more reliable on the region’s busiest roadways, particularly for communities of</p>   | <p>Increased reliability</p> <p>Increased travel efficiency</p> <p>Increased travel options</p> <p>Reduced drive alone trips</p> | <ul style="list-style-type: none"> <li>• Travel time</li> <li>• Travel time reliability</li> <li>• VMT/capita</li> <li>• Duration of congestion</li> </ul>   |

<sup>7</sup> Summarized from 2018 RTP Regional Transportation Plan

<sup>8</sup> Criteria refinements will be developed prior to the Call for Projects in November 2021

<sup>9</sup> Final RFFA performance measures will be developed prior to the Call for Projects in November 2021



| 2018 Regional Transportation Plan Priorities <sup>7</sup> | Outcome(s) Being Measured (Project Criteria) <sup>8</sup> | Performance Measures to Consider <sup>9</sup>  |
|---|---|--|
| color and other historically marginalized communities.    |   | <ul style="list-style-type: none"> <li>• Volume/capacity ratio</li> <li>• System completeness of transit, bike, pedestrian networks in EFAs, near transit, on arterials, on regional freight routes and/or on high injury corridors and TSMO and TDM programs</li> </ul> |

Further staff work will take place during the summer of 2021 to complete the Step 2 performance measures and provide additional guidance to applicants prior to the Call for Projects in November 2021. The performance measures listed above are examples and may not completely reflect the final measures. Metro will convene a technical evaluation work group to help develop performance measures. The work group membership will include regional agency staff and community members with expertise in transportation. A subset of the work group will assist in the technical analysis of Step 2 project proposals.

The technical analysis will measure how completely and thoroughly proposed projects address the criteria. The analysis will include both quantitative and qualitative measures to provide decision-makers with a well-rounded understanding of the proposed project’s attributes and improvements to the regional system.

Depending on the proposed projects submitted for consideration, additional emphasis in evaluating projects may be required to ensure there is an adequate pool of projects that will be eligible to utilize the different sources of federal funding allocated to projects in the RFFA/MTIP process, particularly the use of Congestion Mitigation/Air Quality (CMAQ) funds.

**TOTAL Step 2: \$ 41,249,814**

## STEP 2 PROJECT SELECTION PROCESS

All project funding proposals received in the Step 2 Capital Project category will be considered for selection using the following process:

**Proposer Workshop** – Prior to the Call for Projects, Metro will hold a proposer’s workshop(s). The purpose of this is to clarify the application and evaluation approach to help proposers prepare thorough project proposals that fully demonstrate project benefits and system improvements. The desired outcome is to ensure proposers understand how criteria will be used to evaluate their project, and that they understand what factors will be reviewed in determining the thoroughness of the project’s scope, budget and timeline.

**Call for Projects** – Metro will issue the call for project proposals in November 2021. Applicants will have approximately four months to complete proposals, which are due in February 2022.

**Technical Evaluation** – A work group will review and rate the submitted proposed projects. Proposals will receive a technical score reflecting how well the project addresses the criteria. In addition to this quantitative analysis, the technical report will also include qualitative information to reflect attributes about each project that may not be reflected in a strict numerical score.

By presenting both quantitative and qualitative information, decision-makers and the public can better understand the technical merits of projects, which will help to better inform the regional decision-making process.

**Risk Assessment** – To ensure that RFFA-funded projects can be delivered as proposed, on time, and within budget, Metro will conduct a risk assessment process on each proposal, and issue a report documenting the findings of the process. Proposals will be evaluated on how completely the project has been planned, developed and scoped, and measure the risk of project completion within the 2025-2027 timeframe.

This report will be made publicly available and used as a part of the regional decision-making process.

The Technical Evaluation and Risk Assessment processes will occur concurrently in March and April 2022.

**Public Comment** – Following issuance of the Technical Evaluation and Risk Assessment reports, Metro will conduct a 30-day public comment period in May 2022, focusing on outreach to community and neighborhood organizations, county coordinating committees and other stakeholders. A joint public meeting of JPACT and Metro Council is planned to give decision-makers the opportunity to hear public testimony on project proposals. A summary of input received through the public comment period will be made available along with the Technical Evaluation and Risk Assessment reports to inform the final RFFA decision making process.

**County Coordinating Committee/City of Portland Recommendations** – Each county coordinating committee and the City of Portland will have the opportunity to provide recommendations to decision-makers on which projects submitted from their jurisdictions

best reflect their local priorities. Recommendations are to be provided to TPAC and JPACT in advance of the TPAC action to recommend a package of projects to JPACT.

**TPAC/JPACT Discussion and Action** – Following the above information gathering steps, TPAC will be asked to consider and discuss the input received, and to provide a recommendation to JPACT on a package of projects to be funded, including both Step 1 and Step 2 investments.

JPACT will consider and discuss the TPAC recommendation, and will be requested to take action to refer a package of projects to Metro Council in September 2022.

**Council Action** – Metro Council will consider and take action on the JPACT-referred package in October 2022.

draft



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draft

If you picnic at Blue Lake or take your kids to the Oregon Zoo, enjoy symphonies at the Schnitz or auto shows at the convention center, put out your trash or drive your car – we’ve already crossed paths.

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Mary Nolan, District 5

Bob Stacey, District 6

**Auditor**

Brian Evans

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1700

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 21-5194, FOR THE PURPOSE OF ADOPTING THE 2025-2027 REGIONAL FLEXIBLE FUNDS ALLOCATION POLICY REPORT FOR THE PORTLAND METROPOLITAN AREA

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Date: July 1, 2021

Department: Planning, Development, and Research

Meeting Date: September 9, 2021

Prepared by: Dan Kaempff,  
daniel.kaempff@oregonmetro.gov

Presenter(s): Margi Bradway, Ted Leybold,  
Dan Kaempff  
Length: 30 minutes

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### ISSUE STATEMENT

Every three years, the JPACT and Metro Council, in their role as the federally designated Metropolitan Planning Organization (MPO) board, conduct a process to select transportation investments to be made with the MPO's allocation of federal surface transportation funds, known as the Regional Flexible Funds Allocation (RFFA). These funds are required to be used for projects and programs that advance the policies set forth in the 2018 Regional Transportation Plan (RTP).

This resolution codifies the specific policy direction for how the region is to invest these flexible funds in the federal fiscal years 2025 through 2027 in accordance with the regional investment priorities established in the 2018 RTP.

### ACTION REQUESTED

Approve Resolution No. 21-5194.

### IDENTIFIED POLICY OUTCOMES

Resolution No. 21-5194 supports investments in the region's transportation system that advance four investment priorities: Equity, Safety, Climate Change, and Congestion. Through the 2018 RTP development and adoption process, these priorities were identified by stakeholders and elected officials as the most critical system needs, and they form the foundation for the RTP investment strategy. The RFFA policy report focuses this funding on investments that address and show improvement in these four priority areas.

### POLICY QUESTION(S)

The Regional Flexible Funds provide the opportunity for the region to both leverage other sources of funding, and to focus investment on areas of the system which are critical but do not have other dedicated sources of funding. Through this resolution, the RFFA policy identifies which of these important needs are to receive funding, in order to fulfill RTP policy direction.

### POLICY OPTIONS FOR COUNCIL TO CONSIDER

At the March 9, 2021 Metro Council work session, Council outlined three policy principles to be followed in development of the 2025-2027 RFFA program direction.

These three principles are:

1. In developing the 2018 Regional Transportation Plan (RTP), regional leaders agreed upon a set of recommendations for investments needed to better meet the region's shared goals. The Metro Council at that time directed jurisdictional partners to review and refine their project lists to the extent practicable to help make more progress on these near-term regional transportation investment priorities:
  - a. Equity – Equity is central to all investment priorities. The negative impacts of previous transportation investments fall most heavily on BIPOC and low-income communities. Flexible funds should be focused on investments that reduce these burdens and improve the quality of life for these communities, consistent with the RTP's transportation equity goals and policies.
  - b. Safety – The region has adopted a Vision Zero goal to eliminate the number of traffic deaths and severe injuries, yet the number of fatal and severe injury crashes in the region continues to rise. Flexible funds should be invested in areas with the greatest demonstrated safety need and in a manner that will move the region as quickly as possible towards Vision Zero utilizing the strategies and actions of the Regional Transportation Safety Strategy.
  - c. Climate – Metro's Climate Smart Strategy is the region's adopted direction on how to reduce greenhouse gas emissions from transportation sources. Flexible funds should be invested in a manner consistent with implementing Climate Smart Strategy policies and supporting actions.
  - d. Congestion – While the RTP acknowledges that congestion cannot be eliminated, the flexible funds should support investments that can improve system efficiency, travel time reliability, and expand people's travel choices, consistent with the region's Congestion Management Process.

Council affirms these four RTP investment priorities are the priorities for the 2025-2027 RFFA.

2. The existing two-step framework should continue in the 2025-2027 RFFA. Council recognizes the purposes for and affirms the importance of continuing regional investments made through Step 1. These investments respond to various federal, state and regional obligations and commitments to manage congestion, improve air quality and plan for future growth throughout the region.

The Step 2 capital project funding is an important means of ensuring the vision defined in the RTP comes to fruition. Over the years, these funds have been invested in many transformational projects throughout the region. Continuing to provide funding for local jurisdiction projects that support the four RTP investment priorities is a key component of achieving our regional vision and goals.

3. Council supports adjustments to the existing Step 2 project funding categories and targets. Experience has demonstrated that through thoughtful planning and design, the region can make investments that achieve positive outcomes and address multiple transportation needs. The criteria and selection process for Step 2 projects should be refocused in a manner that supports investing in local projects that benefit the regional transportation system as defined through the four RTP priority areas. Council is open to considering

recommendations for additional investment priority areas that are rooted in regional policy or Council endorsed direction, such as the Metro Council's Six Desired Outcomes.

The 2025-2027 RFFA Program Direction to be adopted by Resolution No. 21-5194 follows this direction previously provided by Council.

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

Resolution No. 21-5194 supports Metro's goals to address racial equity and climate change, as well as making safety and congestion improvements to the region's transportation system. It continues the development of active transportation and high-capacity transit networks that support the region's 2040 growth strategy and provide people with travel options. And it invests in projects that help provide jobs and support important economic sectors.

These outcomes were widely discussed in the three-year process leading to the development of the 2018 RTP. Over 19,000 individual points of contact with stakeholders led to the identification of the RTP investment priorities, and the RFFA policy was built around advancing these priorities.

Specifically, the RFFA policy follows RTP prioritization for investments in these four priority areas:

**Equity** – Reduce barriers and disparities faced by historically marginalized communities, particularly for communities of color and people with low income.

**Safety** – Reduce fatal and severe injury crashes to move the region as quickly as possible toward Vision Zero, particularly for communities of color and other historically marginalized communities.

**Climate** – Reduce greenhouse gas emissions from cars and small trucks to reduce the impacts of climate change, particularly for communities of color and other historically marginalized communities.

**Congestion** – Manage travel demand and increase use of travel options to make travel more reliable on the region's busiest roadways, particularly for communities of color and other historically marginalized communities.

- 1. Known Opposition:** None known at this time
- 2. Policy Development Stakeholders:** TPAC and JPACT developed the 2025-2027 RFFA Program Direction, using input received through three public workshops. The workshop participants included local and regional jurisdictional staff, elected officials, non-governmental organization representatives and community members. The RFFA program framework directly supports and implements the 2018 RTP investment priorities, which were determined through an extensive public process as noted above
- 3. Legal Antecedents:** Updates the 2022-2024 Regional Flexible Funds Allocation Policy Report, adopted by Metro Council Resolution 19-4959 on April 4, 2019
- 4. Anticipated Effects:** Adoption of this resolution will provide the policy direction, program objectives and procedures that will be used during the 2025-2027 Regional Flexible Fund Allocation process to nominate, evaluate, and select projects to receive federal transportation funds as detailed in Table 6 of the policy direction document
- 5. Financial Implications:** There are no impacts for Metro's current budget. This resolution proposes policy for determining future allocations. The amounts are illustrative and rely on a continuation of funding at historic levels with modest inflationary increases. The proposal maintains Step 1 funding for MPO functions on the same proportion and requires the same

10.27 percent match from local participants. Final allocations will depend on available federal funding.

## **BACKGROUND**

The 2025-2027 RFFA Program Direction builds upon previous RFFA direction established by JPACT and Metro Council. It has been updated to align with new regional policy from the 2018 RTP and the supportive modal and topical strategies, specifically focusing on the four investment priorities noted above. It continues the two-step funding approach adopted for the 2014-2015 allocation cycle, which directs funding towards region-wide investments and supports construction of capital projects in specific focus areas.

Through previous RFFA investments made under this two-step approach, the region has helped expand the MAX light rail and Portland Streetcar systems with planning and construction funding. It has provided funding to develop a pipeline of active transportation projects to be ready for future funding opportunities. It has supported highway bottleneck projects by targeting funding to associated arterial improvements. It has supported funding for system and demand management strategies, and improving transit usage through housing and commercial investments. It has helped freight move more reliably with improved safety for all users. And it has helped construct dozens of projects that help people walk, bicycle or access transit more safely and easier.

Based on input from the three RFFA workshops, as well as feedback from TPAC and JPACT, the capital project funding (aka Step 2) category has been changed for this cycle. Previously, Step 2 consisted of two modal target subcategories. 75 percent of the available funding was directed towards Active Transportation and Complete Streets projects. The remaining 25 percent was directed towards projects to improve Freight Mobility and support Economic Outcomes.

The 2025-2027 RFFA Program Direction continues investments in these key regional system needs, focusing on project outcomes that advance the four RTP investment priorities. But the two previous project subcategories have been combined into a single category. Project selection criteria for the Step 2 investments are intended to illustrate how projects perform in each of the four RTP investment priorities. Further work will be conducted during the summer of 2021 to develop performance measures relevant to each of the four criteria and that will be used in the technical evaluation of proposed projects.

Adoption of Resolution No. 21-5194 enables staff to proceed with the next steps in the RFFA process and maintain a timeline which is keyed on having a final list of investments recommended by JPACT in the fall of calendar year 2022. Council is scheduled to consider and take action on a JPACT-approved project list in October 2022. Maintaining this schedule is critical in order for the region to stay coordinated with the state's preparation of the Statewide Transportation Improvement Program (STIP), which is scheduled to be submitted to the federal Department of Transportation in the summer of 2023.

If the RFFA projects are not selected and approved for inclusion in the STIP in a timely manner, the region's ability to spend federal transportation funds could be negatively impacted.

## **ATTACHMENTS**

- Resolution No. 21-5194
- 2025-2027 RFFA Program Direction

Agenda Item No. 5.1

**Ordinance No. 21-1464**, For the Purpose of Annexing to the Metro District Boundary  
Approximately 1.82 Acres Located at 7115 NW Kaiser Road in the North Bethany Area of  
Washington County

*Ordinances (First Reading & Public Hearing)*

Metro Council Meeting  
Thursday, September 09, 2021

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ANNEXING TO THE ) ORDINANCE NO. 21-1464  
METRO DISTRICT BOUNDARY )  
APPROXIMATELY 1.82 ACRES LOCATED AT ) Introduced by Chief Operating Officer  
7115 NW KAISER ROAD IN THE NORTH ) Marissa Madrigal with the Concurrence of  
BETHANY AREA OF WASHINGTON COUNTY ) Council President Lynn Peterson

WHEREAS, Sunshine Elite Investment has submitted a complete application for annexation of 1.82 acres located at 7115 NW Kaiser Road (“the territory”) to the Metro District; and

WHEREAS, the Metro Council added the North Bethany area to the UGB, including the territory, by Ordinance No. 02-987A on December 12, 2002; and

WHEREAS, Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan requires annexation to the district prior to application of land use regulations intended to allow urbanization of the territory; and

WHEREAS, Metro has received consent to the annexation from the owners of the land in the territory; and

WHEREAS, the proposed annexation complies with Metro Code 3.09.070; and

WHEREAS, the Council held a public hearing on the proposed amendment on September 9, 2021; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro District Boundary Map is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance.
2. The proposed annexation meets the criteria in section 3.09.070 of the Metro Code, as demonstrated in the Staff Report dated August 19, 2021, attached and incorporated into this ordinance.

ADOPTED by the Metro Council this \_\_\_ day of September 2021.

\_\_\_\_\_  
Lynn Peterson, Council President

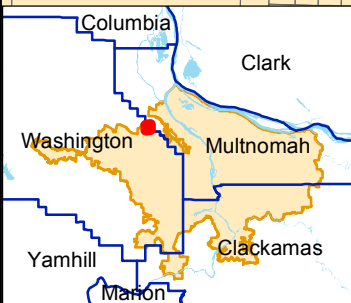
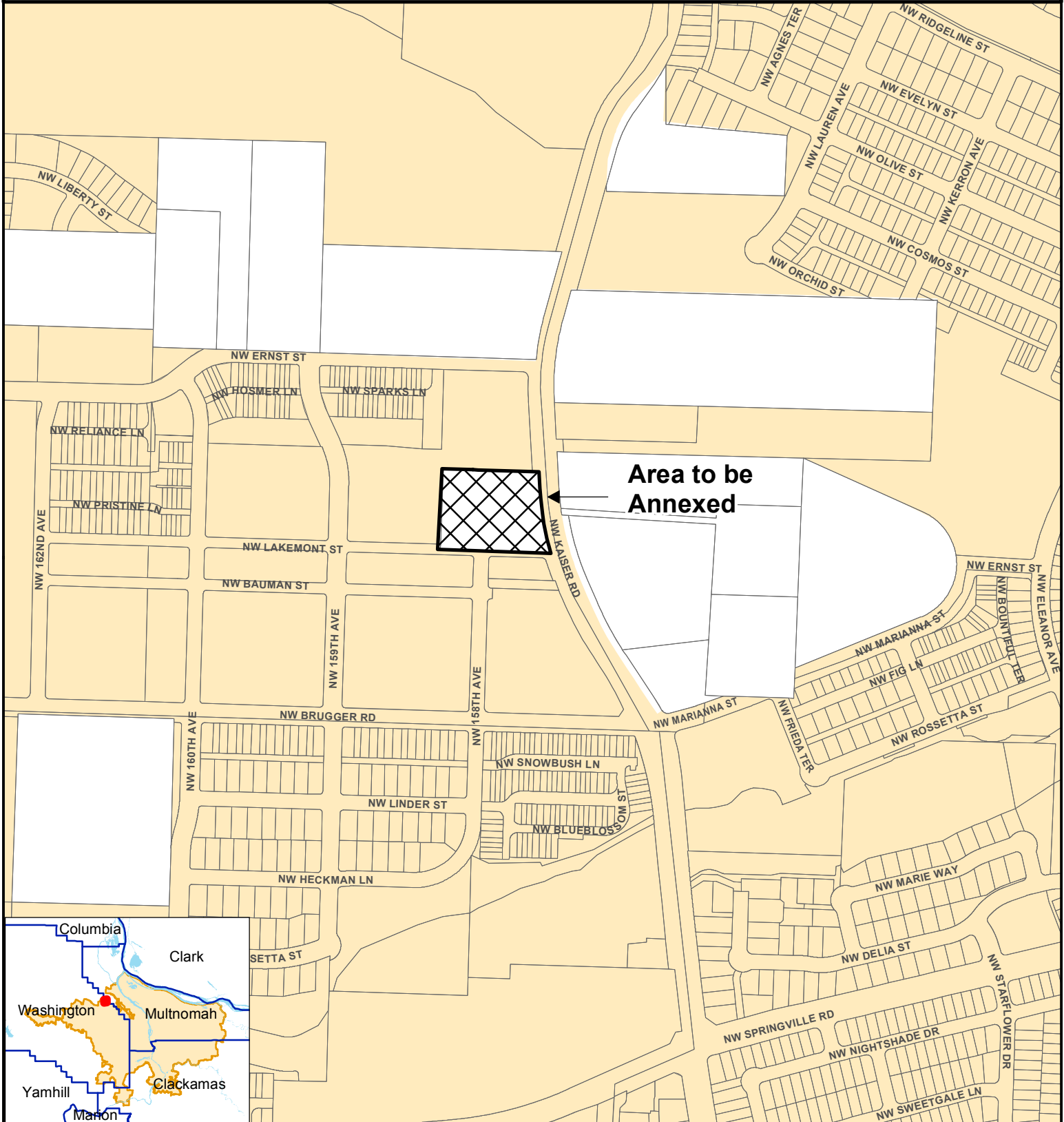
Attest:

Approved as to form:

\_\_\_\_\_  
Jaye Cromwell, Recording Secretary

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney





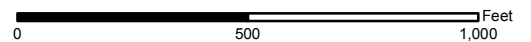
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- Urban growth boundary
- Taxlots
- Metro District Boundary

Proposal No. AN0321



1:5,000



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## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 21-1464, FOR THE PURPOSE OF ANNEXING TO THE METRO BOUNDARY APPROXIMATELY 1.82 ACRES LOCATED AT 7115 NW KAISER ROAD IN THE NORTH BETHANY AREA OF WASHINGTON COUNTY

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Date: August 19, 2021  
Department: Planning & Development

Prepared by: Tim O'Brien  
Principal Regional Planner

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### BACKGROUND

CASE: AN-0321, Annexation to Metro District Boundary

PETITIONER: Sunshine Elite Investment  
15320 NW Central Drive, Ste. D6  
Portland, OR 97229

PROPOSAL: The petitioner requests annexation of land in the North Bethany area of Washington County to the Metro District Boundary.

LOCATION: The land in North Bethany is approximately 1.82 acres in size, is located at 7115 NW Kaiser Road and can be seen in Attachment 1.

ZONING: The land is zoned for neighborhood commercial mixed use and residential (NCMU-NB & R-25+NB)

The land was added to the UGB in 2002 and is part of the North Bethany Subarea Plan that was adopted by Washington County. The land must be annexed into the Metro District for urbanization to occur.

### APPLICABLE REVIEW CRITERIA

The criteria for an expedited annexation to the Metro District Boundary are contained in Metro Code Section 3.09.070.

#### *3.09.070 Changes to Metro's Boundary*

*(E) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:*

- 1. The affected territory lies within the UGB;*

#### Staff Response:

The land in the North Bethany area of Washington County was brought into the UGB in 2002 through the Metro Council's adoption of Ordinance No. 02-987A, thus the affected territory lies within the UGB.

- 2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and*

Staff Response:

The conditions of approval for Ordinance No. 02-987A include a requirement that Washington County apply interim protection measures for areas added to the UGB as outlined in Urban Growth Management Functional Plan Title 11: Planning for New Urban Areas. Title 11 requires that new urban areas be annexed into the Metro District Boundary prior to urbanization of the area. Washington County applied the Future Development 20 (FD-20) zone to the expansion area. Washington County requires the land to be annexed into the appropriate sanitary sewer, water, park and road service districts prior to urbanization occurring, which the applicant is in the process of completing. Thus, the territory was subject to measures that prevented urbanization until the territory is annexed to the necessary service districts.

- 3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS Chapter 195 and any concept plan.*

Staff Response:

The land is part of Washington County's North Bethany Subarea Plan and was included in the North Bethany County Service District, established by the County Board of Commissioners on June 7, 2011. The proposed annexation is consistent with the Subarea Plan, the Bethany Community Plan and the Service District agreement and is required by Washington County as part of a land use application. Thus the inclusion of the property within the Metro District is consistent with all applicable plans.

## ANALYSIS/INFORMATION

**Known Opposition:** There is no known opposition to this application.

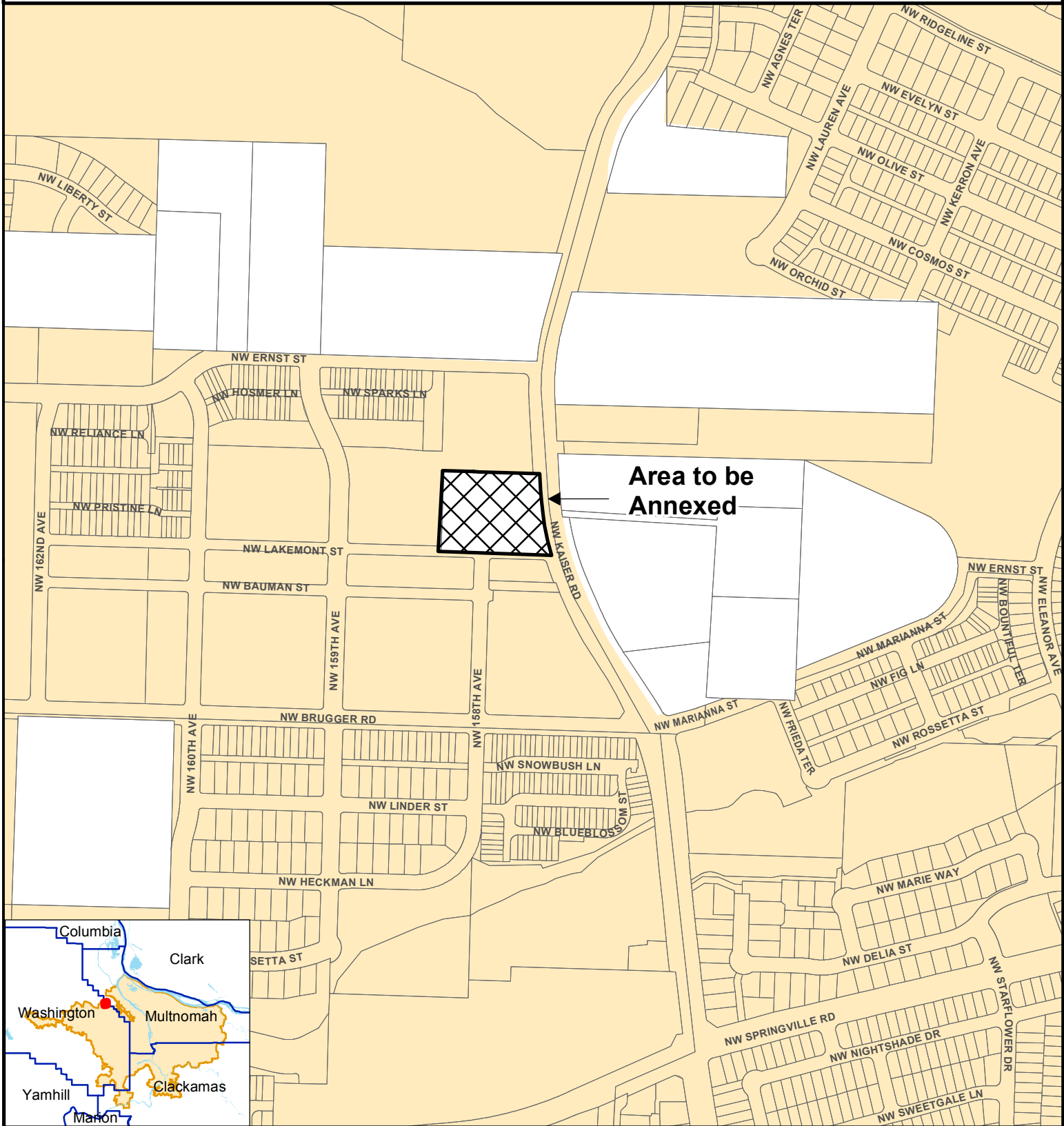
**Legal Antecedents:** Metro Code 3.09.070 allows for annexation to the Metro District boundary.

**Anticipated Effects:** This amendment will add approximately 1.82 acres in the North Bethany area of Washington County to the Metro District. All of the land is currently within the UGB and approval of this request will allow for the urbanization of the land to occur consistent with the North Bethany Subarea Plan.

**Budget Impacts:** The applicant was required to file an application fee to cover all costs of processing this annexation request, thus there is no budget impact.

## RECOMMENDED ACTION

Staff recommends adoption of Ordinance No. 21-1464.



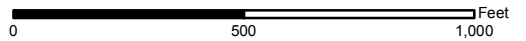
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- Urban growth boundary
- Taxlots
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Agenda Item No. 5.2

**Ordinance No. 21-1465**, Supportive Housing Services Metro Code updates

*Ordinances (First Reading & Public Hearing)*

Metro Council Meeting  
Thursday, September 09, 2021

BEFORE THE METRO COUNCIL

|  |   |                                       |
|--|---|---------------------------------------|
| FOR THE PURPOSE OF AMENDING METRO        | ) | ORDINANCE NO. 21-1465                 |
| CODE CHAPTERS 7.05, 7.06 AND 7.07 TO ADD | ) |                                       |
| CERTAIN CLARIFICATIONS AND MAKE          | ) | Introduced by Chief Operating Officer |
| HOUSEKEEPING CHANGES                     | ) | Marissa Madrigal in concurrence with  |
|  | ) | Council President Lynn Peterson       |
|  | ) |                                       |

WHEREAS, on December 17, 2020, the Metro Council adopted Ordinance 20-1454, which codified the personal and business income taxes approved by the voters for Metro’s Supportive Housing Services Ballot Measure into new code chapters 7.05 (Income Tax Administration), 7.06 (Personal Income Tax) and 7.07 (Business Income Tax); and

WHEREAS, following codification of the personal and business income taxes, Metro staff consulted with stakeholders, Metro’s tax administrator, and tax experts to establish administrative rules to further implement the income taxes; and

WHEREAS, during the administrative rule adoption process, Metro staff determined that certain clarifications and housekeeping changes were needed to code chapters 7.05, 7.06 and 7.07; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Certain sections of Metro Code Chapter 7.05 are amended as set forth in tracked changes in Exhibit A.
2. Certain sections of Metro Code Chapter 7.06 are amended as set forth in tracked changes in Exhibit B.
3. Certain sections of Metro Code Chapter 7.07 are amended as set forth in tracked changes in Exhibit C.

ADOPTED by the Metro Council this \_\_\_ day of September 2021.

\_\_\_\_\_  
Lynn Peterson, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Jaye Cromwell, Recording Secretary

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

**CHAPTER 7.05**

**INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES**

| <b>Section</b> | <b>Title</b>  |
|----------------|---|
| 7.05.010       | Purpose and Applicability                                     |
| 7.05.020       | Definitions   |
| 7.05.030       | Conformity to State Income Tax Laws; Tax Guidance             |
| 7.05.040       | Nexus   |
| 7.05.050       | Tax as a Debt; Collection Authority                           |
| 7.05.060       | Administration  |
| 7.05.070       | Administrative Authority                                      |
| 7.05.080       | Ownership of Taxfiler Information                             |
| 7.05.090       | Confidentiality   |
| 7.05.100       | Persons to Whom Information May Be Furnished                  |
| 7.05.110       | Taxfiler Representation                                       |
| 7.05.120       | Representation Restrictions                                   |
| 7.05.130       | Information Request; Examination of Books, Records or Persons |
| 7.05.135       | Subpoena Powers   |
| 7.05.140       | Taxfiler Records Retention                                    |
| 7.05.150       | Deficiencies and Refunds                                      |
| 7.05.160       | Protests and Appeals; Penalty Waiver                          |
| 7.05.170       | Return Due Date; Extensions                                   |
| 7.05.180       | Payment of Estimated Tax                                      |
| 7.05.190       | Schedule for Payment of Estimated Tax                         |
| 7.05.200       | Tax Return Payment; Minimum                                   |
| 7.05.210       | Payment Plan; Fee   |
| 7.05.220       | Settlement Offers and Agreements                              |
| 7.05.230       | Changes to Federal or State Tax Returns                       |
| 7.05.240       | Criminal Penalties  |
| 7.05.250       | Civil Penalty for Unauthorized Access of Tax Information      |
| 7.05.260       | Penalties for Violations of Business Income Tax Law           |
| 7.05.270       | Penalties for Violations of Personal Income Tax Law           |
| 7.05.280       | Interest  |
| 7.05.290       | Payments Applied  |
| 7.05.300       | Interest on Refunds   |
| 7.05.310       | Accountability of Funds; Audits                               |
| 7.05.320       | Severability  |

### **7.05.010 Purpose and Applicability**

The purpose of this chapter is to provide consistent, efficient and transparent administration of Metro’s Business Income Tax Law and Personal Income Tax Law (collectively, “Metro’s Income Tax Laws.”). The provisions of this chapter apply to the administration of both the Business Income Tax Law and Personal Income Tax Law, as applicable, unless Chapter 7.06 or Chapter 7.07 specifically exempts a provision.

### **7.05.020 Definitions**

For the purpose of this chapter and Metro Code Chapters 7.06 and 7.07, the terms used are defined as provided in this section unless the context requires otherwise.

**Administrator** means Metro’s agent for purposes of administering and enforcing the Business and Personal Income Tax Laws.

**Appeals Board** means the hearings body designated by the Administrator to review taxfiler appeals from final determinations by the Administrator.

**Business** means an enterprise, activity, profession or undertaking of any nature, whether related or unrelated, by a person in the pursuit of profit, gain or the production of income, including services performed by an individual for remuneration, but does not include wages earned as an employee.

**Business Income Tax Law** means the taxes imposed on businesses under the provisions of Metro Code Chapter 7.07.

**Chief Financial Officer** means the Metro Chief Financial Officer and the Officer’s designee(s).

**Chief Operating Officer** means the Metro Chief Operating Officer and the Officer’s designee(s).

**District** means all the territory within the jurisdictional boundary of Metro as provided by law.

**Doing Business** means to engage in any activity in pursuit of profit or gain, including but not limited to, any transaction involving the holding, sale, rental or lease of property, the manufacture or sale of goods or the sale or rendering of services other than as an employee. Doing business includes activities carried on by a person through officers, agents or employees as well as activities carried on by a person on their own behalf.



**Domicile** means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. A person's domicile continues as their domicile until the person demonstrates (1) an intent to abandon the current domicile and acquire a new domicile, and (2) then actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections. A person is domiciled in the District if the person's domicile is located within the District.

**Employee** means any individual who is classified for Oregon tax purposes as an employee. ~~who performs services for another individual or organization and whose compensation is reported by an IRS Form W-2.~~

**Gross Receipts** means all income from whatever source derived.

**Individual** means a natural person, including a natural person who reports that person's income to the State of Oregon in a joint personal State income tax return. In such case, Individual refers to the joint filer.

**Metro** means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing pursuant to Section 14 of Article XI of the Oregon Constitution, ORS Chapter 268 and the Metro Charter.

**Metro Income Tax Laws** means, collectively, the Business Income Tax Law, the Personal Income Tax Law and the code chapters and administrative rules that administer and govern those taxes.

**Metro Taxable Income** means income attributable to sources within the District less deductions from income attributable to sources within the District. This includes, but is not limited to:

- (a) Wages received by a nonresident filer attributable to work performed within the District;
- (b) Items reported to a nonresident filer attributable to the filer's ownership interest in a pass-through entity that does business in the District and reports tax items attributable to that ownership interest to the filer on a Schedule K-1; and
- (c) Income and expenses from a sole proprietorship or disregarded entity attributable to business in the District and reported on a nonresident filer's individual return.

**Net Operating Loss** means the negative taxable income that may result after the deductions allowed by the Business Income Tax Law in determining net income for the tax year.

**Nonbusiness Income** means income not created in the course of the filer's business activities.

**Nonresident** means an individual who is not a resident of the District.

**Oregon Taxable Income** means the taxable income of residents or part year residents as reported or as reportable to the State of Oregon for personal income tax purposes.

**Part-year Resident** means a taxfiler who changes status during a tax year from resident to nonresident or from nonresident to resident.

**Person** means, but is not limited to, an individual, a natural person, married couple filing jointly, proprietorship, partnership, limited partnership, family limited partnerships, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business. Each person who is not a natural person must designate a natural person in writing as its designated representative who is authorized to act and testify on behalf of such person.

**Personal Income Tax Law** means the personal income taxes imposed on District residents and nonresidents under the provisions of Metro Code Chapter 7.06.

**Received** means the postmark date affixed by the United States postal service if mailed, the date stamp if delivered by hand or sent by facsimile, or the receipt date from the online file and pay application confirmation notice.

**Resident** means (1) an individual whose domicile is within the District for the entire taxable year unless the individual maintains no permanent place of abode in the District, does maintain a permanent place of abode outside of the District, and spends on aggregate not more than 30 days per tax year in the District; or, (2) an individual who is not domiciled in the District but maintains a permanent place of abode in the District and spends in the aggregate more than 200 days or any part of a day of the tax year in the District unless the individual proves that the individual is in the District for only a temporary or transitory purpose. Resident does not include: an individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year; the spouse of a qualified individual under Section 911(d)(1) of the Internal Revenue Code, if the spouse is not a resident of the District; 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; a member of the Armed Forces who performs active service as defined in 10 U.S.C. 101(d)(3), other than annual training duty or inactive-duty training, if the member's residency as reflected in the payroll records of the Defense Finance and Accounting Service is outside the District.

**Tax Year** means the taxable year of a person for Federal or State income tax purposes.

**Taxfiler** means any person whose income in whole or in part is subject to Metro Income Tax Laws and is required to file a return under Metro Income Tax Laws.

### **7.05.030 Conformity to State Income Tax Laws; Tax Guidance**

- (a) The Administrator will construe the Business Income Tax Law, when applicable, in conformity with the laws and regulations that govern the Multnomah County Business Income Tax as those laws existed for that tax year. The Administrator will construe the Personal income Tax Law, when applicable, in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income as those laws existed for that tax year.
- (b) Any interpretation under subsection (a) may not conflict with any provision of this chapter, Chapter 7.06, or Chapter 7.07.
- (c) The Administrator has the authority by written policy to connect to or disconnect from any legislative enactment regarding income or excise taxation or the definition of income.

### **7.05.040 Nexus**

The taxes imposed by Chapter 7.06 and Chapter 7.07 apply to all taxpayers that have substantial nexus with the District, subject only to constitutional limitation on Metro's authority.

### **7.05.050 Tax as a Debt; Collection Authority**

- (a) The taxes imposed by Chapter 7.07 and Chapter 7.06 become a debt due to Metro at the time such liability for the tax is incurred. This includes any penalties and interest.
- (b) The Chief Financial Officer or Administrator is authorized to collect any deficient taxes, interest and penalties owed. This includes initiating and defending any civil actions and other legal proceedings.
- (c) Metro or the Administrator, as appropriate, may assign a delinquent tax account to a collection agency for collection.
- (d) Any assignment to an outside collection agency is subject to a reasonable collection fee, as allowed by law, above and beyond any amount owed to Metro.

### **7.05.060 Administration**

- (a) The Administrator is the administrator of record and has the authority to administer and enforce the Metro Income Tax Laws including, but not limited to, administrative return processing, auditing, and determinations; collection of taxes, penalties and interest

(including instituting legal action in any court of competent jurisdiction by or on behalf of the Metro); and protests and appeals.

- (b) The Administrator has access to and maintains all tax filings and records under this chapter and the Metro Income Tax Laws on behalf of Metro. The Administrator may, upon taxfiler's written request and at the sole discretion of the Administrator, interpret how this chapter or the Metro Income Tax Laws apply to taxfiler's facts and circumstances. Nothing in this chapter or Chapters 7.06 and 7.07 preclude or is intended to preclude, the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

#### **7.05.070 Administrative Authority**

- (a) The Administrator may implement procedures, forms, and written policies for administering the provisions of the Business Income Tax Law and Personal Income Tax Law.
- (b) The Administrator will coordinate with Metro to adopt administrative rules relating to matters within the scope of this chapter to administer compliance with the Business Income Tax Law and Personal Income Tax Law.

#### **7.05.080 Ownership of Taxfiler Information**

Metro is the sole owner of all taxfiler information under the authority of the Metro Income Tax Laws. The Chief Operating Officer, Metro Attorney, Chief Financial Officer, Administrator, and their agents have the right to access all taxfiler information for purposes of administration.

#### **7.05.090 Confidentiality**

- (a) No Metro elected official, employee, or agent, nor any person who has acquired information pursuant to the Metro Income Tax Laws, may divulge, release, or make known in any manner any financial information, social security numbers or any other elements of a tax return or tax account, including fact of filing and collection activity submitted or disclosed to Metro or the Administrator under the provisions of this chapter, the Metro Income Tax Laws, and any applicable administrative rules, unless otherwise provided in this chapter or as required by law.
- (b) Nothing in this section prohibits:
  1. The disclosure of general statistics in a form that would prevent the identification of financial information or social security numbers regarding an individual taxfiler;

2. The filing of any legal action by or on behalf of the Administrator or Metro to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or
  3. The assignment to an outside collection agency of any unpaid account balance receivable provided that the Administrator notifies the taxfiler of the unpaid balance at least 60 days before the assignment of the claim.
- (c) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

#### **7.05.100 Persons to Whom Information May Be Furnished**

- (a) The Administrator and Metro Chief Operating Officer may disclose and give access to information described in Section 7.05.090 to an authorized representative of the Department of Revenue, State of Oregon, or of any local government of the State imposing taxes upon or measured by gross receipts or net income, for the following purposes:
1. To inspect the tax return of any taxfiler;
  2. To obtain an abstract or copy of the tax return;
  3. To obtain information concerning any item contained in any return;
  4. To obtain information of any financial audit of the tax returns of any taxfiler; or
  5. To maintain compliance with State or Federal Law (such as providing social security numbers to the Internal Revenue Service with 1099G filings for refunds issued).

Disclosure and access will be granted only if the laws, regulations or practices of the other jurisdiction maintain the confidentiality of this information at least to the extent provided by the Business Income Tax Law or Personal Income Tax Law, as applicable.

- (b) Upon request of a taxfiler, or authorized representative, the Administrator will provide copies of any tax return information filed by the taxfiler in the Administrator's possession to the taxfiler or authorized representative.
- (c) If a court of competent jurisdiction issues a court order requiring the disclosure of a taxfiler's tax return information, the Administrator will comply with the terms of that court order after providing written notice to the taxfiler at taxfiler's last known address.
- (d) The Administrator may also disclose and give access to information described in Section 7.05.090 to:

1. The Metro Attorney, the Attorney's assistants and employees, or other legal representatives of Metro, to the extent disclosure or access is necessary for the performance of the duties of advising or representing Metro.
  2. The Administrator's Attorney, the Attorney's assistants and employees, or other legal representatives of the Administrator, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.
  3. Other Metro employees and agents, to the extent disclosure or access is necessary for such employees or agents to perform their duties regarding or under contracts or agreements between Metro and the Administrator.
  4. The Administrator's employees, agents and officials, to the extent the Administrator deems disclosure or access necessary for such employees, agents or officials to:
    - A. Aid in any legal collection effort on unpaid accounts;
    - B. Perform their duties under contracts or agreements between the Administrator and Metro or between the Administrator and any other department, bureau, agency or subdivision of the Administrator relating to the administration of the Metro Income Tax Laws; or
    - C. Aid in determining whether a Metro Income Tax Law account is in compliance with all City, County, State and Federal laws or policies.
- (e) All employees and agents specified in Section 7.05.100(d) above, prior to the performance of duties involving access to financial information submitted to Metro or the Administrator under the terms of the Personal Income Tax Law or Business Income Tax Law, must be advised in writing of Section 7.05.240 relating to penalties for the violation of Sections 7.05.090 and 7.05.100. Such employees and agents must execute a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of Sections 7.05.090 and 7.05.100.
- (f) No person described in subsection (a) to whom disclosure or access to financial information has been given may make a disclosure under this section unless that person:
1. Is advised in writing of Section 7.05.240 relating to penalties for the violation of Section 7.05.090; and
  2. Executes a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating these provisions of law have been reviewed and that person is aware of the penalties for the violation of Section 7.05.090. The Chief Operating

Officer's or Administrator's signature on the certificate, required by this subsection, constitutes consent to disclosure to the persons executing the certificate.

- (g) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

#### **7.05.110 Taxfiler Representation**

Third parties, such as attorneys or certified public accountants, may represent taxfilers before the Administrator. The Administrator may establish procedures for taxfilers to authorize a third party to represent the taxfiler, which may include a written authorization submitted to the Administrator. The Administrator is not required to recognize a third party who claims to represent a taxfiler if that third party does not comply with the established procedures.

#### **7.05.120 Representation Restrictions**

- (a) No employee or official of Metro, the Administrator, or any public agency authorized to collect taxes imposed by this chapter may represent any taxfiler in any matter before the Administrator. This restriction against taxfiler representation continues for two years after termination of employment or official status.
- (b) Members of the appeals board may not represent a taxfiler before the appeals board. No member of the appeals board may participate in any matter before the board if the appellant is a client of the member or the member's firm.

#### **7.05.130 Information Request; Examination of Books, Records or Persons**

- (a) The Administrator may require a taxfiler to produce documents. The Administrator may also examine any books, papers, records, or memoranda, including State and Federal income or excise tax returns, to ascertain the correctness of any tax return or to make an estimate of any tax. The Administrator has the authority, after notice, to:
1. Require the attendance of any person required to file a tax return under the Metro Income Tax Laws, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Administrator may designate;
  2. Take testimony, with or without the power to administer oaths to any person required to be in attendance; and
  3. Require proof for the information sought, necessary to carry out the provisions of this

chapter.

- (b) The Administrator will designate the employees who have the power to administer oaths under this section.

#### **7.05.135 Subpoena Powers**

- (a) The Administrator may subpoena and examine witnesses, administer oaths, and require the production of any books or papers in the hands of any person, company or corporation, whenever necessary for the prosecution of any inquiries deemed necessary or proper.
- (b) If any person fails to comply with any subpoena of the Administrator or refuses to testify when the Administrator requires that person to testify, the Administrator may apply to a court of competent jurisdiction for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the Administrator.
- (c) The Administrator will apply to the court by ex parte motion, upon which the court will make an order requiring the person against whom it is directed to comply with the Administrator's request or demand within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order will be served upon the person to whom it is directed in the manner required by the State of Oregon or other applicable jurisdiction for service of process, which is required to confer jurisdiction upon the court.
- (d) Upon petition of the person subpoenaed, the court will make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed. Upon failure of the subpoenaed person to show cause for noncompliance, the court will make an order requiring the person to comply with the demand of the Administrator within such time as the court directs.
- (e) Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, that may exist.
- (f) The Administrator will designate the employees who have the power to administer oaths under this section.

#### **7.05.140 Taxfiler Records Retention**

Every person required to file a return under the Business Income Tax Law or Personal Income



Tax Law must keep and preserve for not less than seven years such documents and records, including State and Federal income and excise tax returns, accurately supporting the information reported on the taxfiler's return and calculation of tax for each year.

#### **7.05.150 Deficiencies and Refunds**

- (a) The Administrator may assess deficiencies and grant refunds any time within the periods set forth for deficiencies or refunds under ORS Chapter 314. The Administrator may by agreement with the taxfiler extend the time periods to the same extent as provided by statute.
- (b) When no tax return has been filed, there is no time limit for a notice of deficiency or the assessment of taxes, penalty and interest due.
- (c) Notwithstanding subsections (a) and (b), the Administrator is not required to accept any tax return for any tax period from a taxfiler if:
  - 1. The Administrator obtains a money judgment against the taxfiler for failure to pay an unpaid account balance due; and
  - 2. The Administrator or its designee lawfully served the taxfiler with the lawsuit pursuant to the Oregon Rules of Civil Procedure; and
  - 3. The tax return is for a taxable year that is the subject of the general money judgment; and
  - 4. The Administrator gave written notice stating that the taxfiler had an outstanding balance due at least 30 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.

#### **7.05.160 Protests and Appeals; Penalty Waiver**

- (a) A taxfiler may protest any determination by the Administrator. The Administrator must receive written notice of the protest within 30 days after the Administrator mailed or delivered the notice of determination to the taxfiler. The protest must state the name and address of the taxfiler and an explanation of the general grounds for the protest. The Administrator must respond within 30 days after the protest is filed with either a revised determination or a final determination. The Administrator's determination must include the reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator for good cause. Requests for extensions of time must be

received before the original 30-day protest deadline expires. The Administrator will give written notice to the taxfiler if the Administrator's deadline is extended.

(b) A taxfiler may appeal any final determination by the Administrator to the appeals board. The Administrator must receive written notice of the appeal within 30 days after the Administrator mailed or delivered the final determination to the appellant. The notice of appeal must state the name and address of the appellant and include a copy of the final determination.

(c) Within 90 days after the Administrator mails or delivers the final determination to the appellant, the appellant must file with the appeals board a written statement containing:

1. The reasons the Administrator's determination is incorrect; and
2. What the correct determination should be.

Failure to file this a written statement within the time permitted is a waiver of any objections, and the appeal will be dismissed.

(d) Within 150 days after the Administrator mails or delivers the final determination to the appellant, the Administrator will file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response must be mailed to the address provided by the appellant within 10 days after the Administrator files it with the appeals board.

(e) The Administrator must provide the appellant written notice of the hearing date and location at least 14 days before the hearing. The appellant and the Administrator may present relevant testimony, evidence, and oral argument at the hearing. The appeals board may request additional written comment and documents as the board deems appropriate.

(f) Decisions of the appeals board must be in writing, state the basis and legal authority for the decision and be signed by the appeals board chair.

(g) The decision of the appeals board is final as of the issue date and no further administrative appeal will be provided.

(h) The filing of an appeal with the appeals board temporarily suspends the obligation to pay any tax that is the subject of the appeal pending a final decision by the appeals board.

(i) Penalty waiver or reduction requests are not subject to the protest/appeal process or timeline outlined in subsections 7.05.160(a) through 160(h). The taxfiler must file a written request with the Administrator detailing why a penalty should be waived within 30 days of receipt of a billing notice that assesses a penalty. The Administrator must respond to requests to reduce or waive penalties within 60 days from the date the written request is

received. As provided in subsections 7.05.260(f) and 7.05.270(e), the Administrator may waive or reduce penalties in certain situations. If the taxfiler has requested that penalties be waived and the Administrator denies the taxfiler's request for this discretionary waiver of penalties, the taxfiler may request a conference with the Administrator (or Administrator's designee) within 30 days of the date of the Administrator's notice of denial. If the conference with the Administrator results in a denial of the penalty waiver request, that decision is final and may not be appealed to the Appeals Board.

#### **7.05.170 Return Due Date; Extensions**

- (a) Tax returns must be on forms provided or approved by the Administrator. All tax returns must be filed together with payment of the specified tax by the fifteenth day of the fourth month following the end of the tax year. If the due date falls on a weekend or Federal or State holiday, the due date is the first business day following the weekend or holiday. With respect to the Business Income Tax Law, for cooperatives and non-profit corporations that have later due dates under Oregon tax law, the due date for filing tax returns with the Administrator must conform to the due date under Oregon tax law.
- (b) The Administrator may, for good cause, grant extensions for filing returns. However, no extension may be granted for more than six months beyond the initial due date. This extension does not extend the time to pay the tax. Payments made after the due date may be subject to interest and penalties as provided in this chapter.
- (c) The tax return must contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.
- (d) The Administrator will prepare blank tax returns and make them available upon request. Failure to receive a form does not relieve any person from the obligation to pay a tax under either the Business Income Tax Law or Personal Income Tax Law.

#### **7.05.180 Payment of Estimated Tax**

- (a) Every taxfiler expecting to have a tax liability under Chapter 7.06 or Chapter 7.07 of \$1,000 or greater must estimate and pay the taxfiler's tax liability for the current tax year as follows:
  - 1. Quarterly payments as provided in Section 7.05.190; or
  - 2. Employer provided withholding from taxfiler's wages as provided in Section 7.06.120.

- (b) If a taxfiler is required to remit estimated tax payments, such amounts remitted must total either the lesser of ninety percent of the taxfiler's current year tax liability or one hundred percent of the taxfiler's reported prior year tax liability.
- (c) The Administrator will not impose underpayment interest for failure to make quarterly estimated payments for tax year 2021 (tax year beginning on or after January 1, 2021). For tax years beginning on or after January 1, 2022, the Administrator will impose penalties and interest as provided in this chapter.

#### **7.05.190 Schedule for Payment of Estimated Tax**

(a) A taxfiler required under Section 7.05.180 to make payments of estimated tax must make the payments in installments as follows:

1. One quarter or more of the estimated tax on or before the fifteenth day of the fourth month of the tax year;
2. One quarter or more of the estimated tax on or before the fifteenth day of the sixth month of the tax year;
3. One quarter or more of the estimated tax on or before the fifteenth day of the ninth month of the tax year; and
4. For business income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the twelfth month of the tax year;
5. For personal income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the first month of the subsequent tax year.

(b) Any payment of the estimated tax received by the Administrator for which the taxfiler has made no designation of the quarterly installment to which the payment is to be applied, will first be applied to underpayments of estimated tax due for any prior quarter of the tax year. Any excess amount will be applied to the installment that next becomes due after the payment was received.

~~(b)~~(c) If the due date falls on a weekend or federal holiday, the due date is the first business day following the weekend or holiday.

#### **7.05.200 Tax Return Payment; Minimum**

(a) Business Income Tax. Each business income tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.07.030, provided that each tax

return must be accompanied by a minimum tax of \$100. The minimum payment may have previously been paid by quarterly payments, an extension payment, or credit available from a prior tax year.

- (b) Personal Income Tax. Each personal tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.06.040.

#### **7.05.210 Payment Plan; Fee**

If a person fails to pay the Business Income Tax or Personal Income Tax when due, the Administrator may establish a payment plan pursuant to written policy. The Administrator may charge a setup fee for each payment plan established.

#### **7.05.220 Settlement Offers and Agreements**

- (a) The Administrator may, upon good and sufficient cause, make settlement agreements with taxfilers in the recomputation of taxes payable or in the collection of those taxes. These agreements must be consistent with ORS 305.150 and 305.155 and corresponding OARs. The Administrator will provide applications for settlement offers to taxfilers proposing settlement offers.
- (b) In addition to the general power granted under this section, the Administrator may, upon a showing of good and sufficient cause, grant a taxfiler's request when the Oregon Department of Revenue has granted relief to a taxfiler under ORS 316.368 or ORS 316.369. In such case, a taxfiler who is granted relief will be treated as a single taxfiler for purposes of the tax imposed under this Chapter.

#### **7.05.230 Changes to Federal or State Tax Returns**

- (a) If a taxfiler's reported income under applicable State laws imposing a tax on or measured by income is changed by the Federal Internal Revenue Service or the State Department of Revenue, or amended by the taxfiler to correct an error in the original Federal or State return, the taxfiler must file a report of that change with the Administrator within 60 days after the date of the notice of the final determination of change or after an amended return is filed with the Federal or State agencies. The report must be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.
- (b) The Administrator may assess deficiencies and grant refunds resulting from changes to any relevant Federal, State or local income tax return within the time periods provided for in Section 7.05.150, treating the report of change in Federal, State or business income tax return as the filing of an amended tax return.

- (c) The Administrator may assess penalties and interest on the additional tax due as provided in Sections 7.05.260, 7.05.270, and 7.05.280 or may refuse to grant a refund of taxes as a result of the amended return if the amended return is not filed with the Administrator within the time limits set forth in subsection (a).

#### **7.05.240 Criminal Penalties**

A violation of Section 7.05.090 or Section 7.05.100 is punishable, upon conviction thereof, by a fine not exceeding \$500 or by imprisonment for a period not exceeding six months, or by both fine and imprisonment. In addition, any Metro employee convicted for violation of Section 7.05.090 or Section 7.05.100 is subject to possible dismissal from employment and a possible prohibition from employment for a period of five years thereafter. Any agent of Metro who is convicted is ineligible for participation in any Metro contract for a period of five years thereafter.

#### **7.05.250 Civil Penalty for Unauthorized Access of Tax Information**

- (a) Definitions. As used in this section, the following definitions apply:

*Computer Database* means any computer application(s) used by the Administrator to calculate or store business, personal, and financial data collected under the authority granted by Metro Income Tax Laws.

*Loss* means any reasonable cost incurred by Metro or the Administrator, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

- (b) Any individual who intentionally accesses the Computer Database without authorization will be fined:
1. \$10,000 if the individual acquires any information regarding any business or personal account found in the Computer Database;
  2. \$10,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or
  3. \$10,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Computer Database, and, as a result of such conduct, causes damage to the Computer Database.

**7.05.260 Penalties for Violations of Business Income Tax Law**

(a) A penalty will be assessed if a person:

1. Fails to file a tax return or extension request at the time required under Section 7.05.170(a) or 7.05.230(a); or
2. Fails to pay a tax when due.
3. The penalty under subsection (a) is:
  - A. Five percent of the total tax liability if the failure is for a period less than four months;
  - B. An additional penalty of twenty percent of the total tax liability if the failure is for a period of four months or more; and
  - C. An additional penalty of one hundred percent of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(b) A penalty will be assessed if a person who has filed an extension request:

1. Fails to file a tax return by the extended due date; or
2. Fails to pay the tax liability by the extended due date.
3. The penalty under subsection (b) is:
  - A. Five percent of the total tax liability if the failure is for a period of less than four months; and
  - B. An additional penalty of twenty percent of the total tax liability if the failure is for a period of four months or more.

(c) A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.

3. The penalty under subsection (c) is five percent of the tax underpayment, but not less than \$5.
- (d) The Administrator may impose a civil penalty of up to \$500 for each of the following violations of this chapter:
1. Failure to file any tax return within 60 days of the Administrator's original written notice to file; or
  2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment; or
  3. Failure to provide either documents or information as required by this chapter or Chapter 7.07 within 60 days of the Administrator's original written notice to provide the documents or information; or
  4. Failure to fully complete any form required under the Business Income Tax Law; or
  5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.07 unless the section has a separate penalty calculation.
- (e) The Administrator may impose a civil penalty under subsection (d) only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.
- (f) The Administrator may waive or reduce any penalty determined under subsections (a) through (d) for good cause, according to and consistent with written policies.
- (g) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.07. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Business Income Tax Law.

#### **7.05.270 Penalties for Violations of Personal Income Tax Law**



The Administrator will assess the following penalties upon personal income taxfilers:

(a) Failure to File a Return; Failure to Pay Tax When Due. If a taxfiler fails to file a return or fails to pay a tax by the date on which the filing or payment is due, the Administrator will add a delinquency penalty of:

1. Five percent of the amount of the unpaid tax if the failure is for a period less than four months;
2. An additional penalty of twenty percent of the unpaid tax if the failure is for a period of four months or more; and
3. An additional penalty of one hundred percent of the unpaid tax of all tax years if the failure to file is for three or more consecutive tax years.
4. For purposes of this section, unpaid tax is the taxfiler's tax liability reduced by payment of tax and any credit against tax that is claimed on the return.

(b) Underpayment of Tax. A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.
3. The penalty under subsection (b) is five percent of the tax underpayment, but not less than \$5.

(c) Intent to Evade. If a taxfiler fails to file a return with the intent to evade the tax imposed under this chapter or Chapter 7.06, or a taxfiler prepares or causes to be prepared a return and files that return with the intent to evade the tax imposed under this chapter or Chapter 7.06, the Administrator will impose a penalty in the amount of one hundred percent of any deficiency that the Administrator determines is due.

(d) Substantial Understatement of Tax. If the Administrator determines that there is a substantial understatement of tax due under this chapter or Chapter 7.06, the Administrator will add to the amount of tax required to be shown on the return a penalty equal to twenty percent of the amount of any underpayment of tax attributable to the understatement.

1. For purposes of this subsection, a substantial understatement of tax exists if the amount of the understatement exceeds \$1,000 of tax otherwise due.

2. In the case of any item attributable to an abusive tax shelter: no reduction of the amount of the understatement will be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxfiler; and, no reduction of the amount of the understatement will be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the Administrator determines in the Administrator's sole discretion, that the taxfiler reasonably believed that the tax treatment of the item was more likely than not the proper treatment. This chapter expressly adopts the definitions contained in ORS 314.402 and the administrative rules thereunder.
  3. The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the taxfiler that there was reasonable cause for the understatement or any portion thereof, and that the taxfiler acted in good faith.
- (e) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.06. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (f) Failure of Administrative Compliance. The Administrator may impose a penalty of up to \$500 for the following violations of this chapter:
1. Failure to file any tax return within 60 days of the Administrator's original written notice to file;
  2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment;
  3. Failure to provide either documents or information as required by this chapter or Chapter 7.06 within 60 days of the Administrator's original written notice to provide the documents or information;
  4. Failure to fully complete any form required under the Personal Income Tax Law; or
  5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.06 unless the section has a separate penalty calculation.

The Administrator may impose a civil penalty under this subsection only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or

respond in the original written notice. The Administrator may waive all or any part of the penalty imposed under this paragraph on a showing by the taxfiler that there was reasonable cause for the Failure of Administrative Compliance, and that the taxfiler acted in good faith.

- (g) Penalties cumulative. Each penalty imposed under this section is in addition to any other penalty imposed under this section.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Personal Income Tax Law.

### **7.05.280 Interest**

- (a) Interest will be assessed on any unpaid tax at the rate in subsection (c), computed from the original due date of the tax to ~~the fifteenth day of the month following~~ the date of payment.
- (b) Interest will be assessed on any unpaid or underpaid quarterly estimated payment required by Section 7.05.180 and Section 7.05.190 at the rate in subsection (c), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.
- (c) Unless specifically provided otherwise by administrative rule as provided in subsection (d), the interest rate is 0.833% simple interest per month or fraction thereof (ten percent per annum).
- (d) If the Administrator determines that the interest rate provided in subsection (c) is at least one percentage point more or less than the effective interest rate on January 1 charged by the State of Oregon Department of Revenue, the Administrator may adjust the interest rate by administrative rule to match the State of Oregon Department of Revenue interest rate. The Administrator may not adjust the interest rate more than once in a calendar year. The adjusted interest rate applies to unpaid tax or underpaid estimated payments outstanding on or after the effective date of the adjusted interest rate.
- (e) Notwithstanding subsection (b), there is no interest on underpayment of quarterly estimated payments if:
  1. The total tax liability of the prior tax year was less than \$1,000;
  2. An amount equal to at least ninety percent of the total tax liability for the current tax year was paid in accordance with Section 7.05.190; or
  3. An amount equal to at least one hundred percent of the prior year's total tax liability was paid in accordance with Section 7.05.190.

- (f) For purposes of subsection (b), the amount of underpayment is determined by comparing ninety percent of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if one hundred percent of the prior year's total tax liability is paid to the Administrator by the due date of the fourth quarterly payment, the Administrator may use the prior year's tax liability if doing so will reduce the amount of interest owed.
- (g) For purposes of subsection (a), the amount of tax due on the tax return will be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with Section 7.05.170(a) or Section 7.05.190.
- (h) Interest at the rate specified in subsection (a) accrues from the original due date without regard to any extension of the filing date.
- (i) Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Administrator, unless specifically provided for by written policy.

#### **7.05.290 Payments Applied**

Tax payments received will be applied first to any penalty accrued, then to interest accrued, then to taxes due, unless the Administrator determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account. The Administrator will apply tax payments received without a designation for a specific period to the oldest periods first in the order set forth above.

#### **7.05.300 Interest on Refunds**

When a taxfiler is entitled to a refund of a portion or all of a tax paid to the Administrator, the taxfiler will receive simple interest on that amount at the rate specified in Section 7.05.280(c), subject to the following:

- (a) Any overpayments will be refunded with interest for each month or fraction thereof for a period beginning four months after the later of:
  1. The due date of the tax return;
  2. The date the tax return was filed or the refund was otherwise requested; or
  3. The date the tax was paid, to the date of the refund.

- (b) Any overpayments of taxes that are the result of an amended return being filed will be refunded with interest for each month or fraction thereof for the period beginning four months after the date the taxfiler filed the amended return. This subsection applies to tax returns that are amended due to a change to any relevant Federal, State or local income tax return.

**7.05.310 Accountability of Funds; Audits**

- (a) Every year a public accounting firm must conduct a financial audit of the revenue generated by the Business Income Tax and Personal Income Tax Laws and the distribution of that revenue. Metro will make the audit public as well as any report to the Metro Council regarding the results of the audit. Metro may use the revenue generated by the taxes to pay for the costs of the audit required under this section.
- (b) The revenue and expenditures from the taxes are subject to performance audits conducted by the Office of the Metro Auditor.

**7.05.320 Severability**

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

**CHAPTER 7.06**

**PERSONAL INCOME TAX**

| <b>Section</b>  | <b>Title</b>   |
|-----------------|--|
| 7.06.010        | Title  |
| 7.06.020        | Administration of Personal Income Tax Law  |
| 7.06.030        | Definitions  |
| 7.06.040        | Personal Income Tax Imposed; Filing Status   |
| 7.06.050        | Effective Date and Reauthorization; Term   |
| 7.06.060        | Tax Exemptions   |
| 7.06.070        | Individuals Required to File a Tax Return  |
| 7.06.080        | Taxfiler Identification Number   |
| 7.06.090        | Deduction for Pass-through Income  |
| 7.06.100        | Proration of Income for Part Year Residents  |
| <u>7.06.101</u> | <u>Credit for Personal Income Taxes Paid by Resident to Another State Jurisdiction</u> |
| 7.06.110        | Overpayments of Personal Income Tax  |
| 7.06.120        | Withholding Tax on Wages   |
| 7.06.130        | Withholding Reconciliation by Employer for Payment of Withheld Tax                     |
| 7.06.140        | Final Tax Returns(s) of Deceased Taxfiler  |
| 7.06.150        | Severability   |

### **7.06.010 Title**

This chapter is known and may be cited as the Metro Personal Income Tax Law.

### **7.06.020 Administration of Personal Income Tax Law**

The Personal Income Tax Law will be administered under the provisions set forth in this chapter and Metro Code Chapter 7.05, as applicable.

### **7.06.030 Definitions**

For purposes of this chapter, the terms used are defined as provided in Chapter 7.05, unless the context requires otherwise.

### **7.06.040 Personal Income Tax Imposed; Filing Status**

- (a) A tax of one percent is imposed on the entire Oregon Taxable Income of every resident of the District subject to tax under ORS chapter 316. Taxfilers that file a joint Metro return may exempt the first \$200,000 of taxable income; taxfilers that file a single Metro return may exempt the first \$125,000 of taxable income.
- (b) A tax of one percent is imposed upon the Metro Taxable Income of every nonresident of the District subject to tax under ORS chapter 316. Taxfilers that file a joint Metro return may exempt the first \$200,000 of taxable income; taxfilers that file a single Metro return may exempt the first \$125,000 of taxable income.
- (c) Taxfiler filing status must follow the filing status of the taxfiler's Oregon income tax return.
  - 1. Taxfilers using Oregon filing statuses married filing jointly, head of household and qualifying widow(er) must file a joint Metro return.
  - 2. Taxfilers using Oregon filing statuses single and married filing separately must file a single Metro return.

### **7.06.050 Effective Date and Reauthorization; Term**

- (a) The Metro Personal Income Tax takes effect in Tax Year 2021 (Tax Year beginning on or after January 1, 2021).

- (b) The Metro Personal Income Tax will remain in effect for all periods through Tax Year 2030 (Tax Year beginning on or after January 1, 2030).
- (c) After Tax Year 2030, the tax will expire unless reauthorized by Metro voters on or before that date. After the tax expires, Metro or the entity authorized to collect the Personal Income Tax may continue to take all reasonable and necessary actions to ensure that taxes still owing are paid in full.

#### **7.06.060 Tax Exemptions**

- (a) Exemptions Required by Law. A person whom Metro is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon or the Metro Charter is exempt from payment of the tax set forth in this chapter.
- (b) Notwithstanding the exemptions listed in subsection (a), the Administrator may require the filings of tax returns or other documentary verification of any exemption claimed under this section.

#### **7.06.070 Individuals Required to File a Tax Return**

- (a) Every resident of the District who is required to file an Oregon income tax return for the taxable year and who reports Oregon Taxable Income over \$200,000 using Oregon filing status married filing jointly, head of household or qualifying widow(er), or over \$125,000 using Oregon filing status single or married filing separately is required to file a Metro Personal Income Tax return.
- (b) Every nonresident of the District who is required to file an Oregon income tax return for the taxable year and who reports Metro Taxable Income over \$200,000 using Oregon filing status married filing jointly, head of household or qualifying widow(er), or over \$125,000 using Oregon filing status single or married filing separately is required to file a Metro Personal Income Tax return.
- (c) Nothing contained in this section precludes the Administrator from requiring any individual to file a return when, in the judgment of the Administrator, the individual should file a return.
- (d) The Administrator will release the form that the taxfiler must file. The Administrator may accept substitute forms (such as created by tax software) provided the forms include identical information in comparable format as provided on the Metro tax return form.
- (e) A copy of the taxfiler's Oregon tax return is required to be filed with the tax return. If the personal income tax has been withheld from wages, a copy of Form W-2 is required to be



filed with the Personal Income Tax return unless otherwise notified by the Administrator. The Administrator is authorized to require a taxfiler to submit additional information with the taxfiler's report if, in the Administrator's sole discretion, such information is necessary to effectively administer the tax imposed under this chapter.

#### **7.06.080 Taxfiler Identification Number**

- (a) A taxfiler must provide information on tax records as required on and forms established by the Administrator. This includes tax returns, refund claims, applications, registrations, records, requests for information, reports, and other items of a similar nature filed with the Administrator as required by the item being filed.
- (b) The Administrator uses Tax Identification Numbers as a part of providing expeditious and practicable processing systems in the administration of the laws by the Administrator, including (but not limited to) such matters as the issuance of tax refunds, allocation or application of incoming tax payments and other matters of a similar nature. The Administrator may require a taxfiler to provide a copy of the taxfiler's social security card.
- (c) A social security number used as a taxfiler identification number is confidential information. Disclosure of social security numbers resulting in a breach of confidentiality will result in penalties pursuant to Metro Code Section 7.05.240.

#### **7.06.090 Deduction for Pass-through Income**

- (a) A taxfiler is allowed a deduction from taxable income for pass-through income subject to tax under Metro Chapter 7.07 Business Income Tax. Pass-through income comes from a business whose net income is taxed on the owners' or partners' personal tax returns. This includes, but is not limited to, entities taxed as partnerships and S-corporations.
- (b) The deduction amount allowed in subsection (a) is the individual owners' or partners' distributive share of taxable income on the Metro Business Income Tax return, as calculated and reported to the owner or partner by the business.
- (c) If the taxable income per the Metro Business Income Tax return is zero, the taxfiler is not allowed a deduction.

#### **7.06.100 Proration of Income for Part-Year Residents**

If a taxfiler is a part-year resident of the District for the tax year at issue, the taxfiler's taxable income includes:

- (a) For the portion of the year in which the taxfiler was a resident of Metro, the taxfiler's Oregon Taxable Income;
- (b) For the portion of the year in which the taxfiler was a nonresident, the taxfiler's Metro Taxable Income.

**7.06.101 Credit for Personal Income Taxes Paid by Residents to Another State Jurisdiction**

- (a) A resident that pays personal income taxes based on or measured by net income to another state jurisdiction is allowed a credit against tax otherwise owed under this chapter for the amount of income tax imposed on the taxfiler for the tax year by that other state jurisdiction on income derived from sources therein and that is also subject to the Metro Personal Income Tax.
- (b) The credit provided under this section is the lesser of the District tax based on mutually taxed income or the tax actually paid to the other state.
- (c) No credit is allowed under this section for income taxes paid to a state that allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence.
- (d) The Administrator will establish by written policy the criteria and procedures for obtaining the credit, such as furnishing proof of tax payment to another state jurisdiction, and examples when this credit is allowed. The Administrator may refer to ORS 316.082 to establish these policies.

**7.06.110 Overpayments of Personal Income Tax**

To the extent a refund is allowed by Metro Code 7.05.150(a), the Administrator will apply overpayments of the personal income tax in the following manner:

- (a) Overpayments will first be applied against any outstanding balances due from prior years (with the net overpayment, if any, to be refunded).
- (b) If the Administrator determines that prior Metro tax returns were due but have not yet been filed, overpayments will be transferred as a credit to the estimated tax account of ~~to~~ the earliest prior year~~(s)~~ yet to be filed.
- (c) If the Administrator determines that no outstanding balances are due and no prior returns are outstanding, the Administrator will offer the taxfiler the option of either a refund of all overpayments or a credit of the balance to the current open estimated tax account.

- (d) The credit will be applied as of the fifteenth day of the fourth month of the taxable year to the extent that the overpayment of tax is attributable to payments received prior to that date. Payments received after the first quarter estimated tax due date will be applied to estimated tax as of the date the payment is received. In the case of an amended or delinquent return, the amount will be credited to the estimate tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later.
- (e) No refunds or credits toward estimated taxes will be allowed for overpayments on returns filed outside the time periods for refunds allowed by Metro Code 7.05.150(a).

### 7.06.120 Withholding Tax on Wages

(a) Employer Withholding from Employee Wages.

1. Beginning January 1, 2021 withholding will be voluntary. However, an employer must offer to its employees in writing to withhold the Metro personal income tax from the employees' wages as soon as the employer's payroll system(s) can be configured to capture and remit the taxes withheld.
2. Beginning January 1, 2022, and each year thereafter, withholding is mandatory for all employees ~~that who~~ work in the Metro District and earn \$200,000 or more during the calendar year. ~~This applies to residents and nonresident employees.~~
  - A. For employees who are residents of the District, withholding is calculated on all wages.
  - A.B. For employees who are nonresidents of the District, the minimum required withholding is calculated on wages paid for services performed in the District.
3. Employers must also offer withholding to all employees who are not subject to mandatory withholding.
- ~~2.4.~~ 2.4. An employee below the \$200,000 earning threshold in subsection (2) may choose to "opt in" to withholding with the employer, based on the employee's tax situation. An employee who meets the mandatory withholding criteria in subsection (2) may choose to "opt out" of withholding by the employer based on the employee's tax situation. The Administrator will provide guidance to employers on the information a taxfiler (employee) must provide to taxfiler's employer to "opt in" or "opt out" of withholding. Once provided, the employer must honor the employee's withholding election until notified of a change.
- ~~3.5.~~ 3.5. An employer must provide all "opt out" information to the Administrator on an annual basis in such form as the Administrator prescribes or upon a withholding audit by the Administrator.

- (b) Due Date of Withheld Taxes to Administrator by Employer. An employer who withholds the Personal Income Tax from employee payroll must remit the withheld amounts to the Administrator within the time that each employer is required to remit taxes withheld for state income tax purposes for any period.

Withheld amounts remitted to the Administrator must be accounted for as part of the collections under this section. No employee has any right of action against an employer in respect of any moneys deducted from wages and remitted in compliance or intended compliance with this section.

- (c) Personal Liability of Responsible Officers, Partners, Members, or Employees. If an employer withholds amounts due under this chapter from an employee's wages with proper authorization from the employee, the employer must remit that withheld tax on the due date as set forth in subsection (b). This chapter provides no extension of time, nor can the Administrator grant an extension. The employer holds the funds involved in trust for Metro, and any use of the funds by the employer is an illegal conversion.

1. When an employer fails to remit in whole or in part any tax withheld at the time required under this section, the Administrator will assess a late payment penalty. The penalty is:
  - A. Five percent of the balance of the tax paid after the original due date if the failure to remit is for a period less than or equal to four months;
  - B. An additional 20 percent of the balance of the tax paid after the original due date if the failure to remit is for a period greater than four months; and,
  - C. An additional penalty of 100 percent of the balance of the tax paid after the original due date of all tax years if the failure to remit is for three or more consecutive tax years.

The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the employer that there was reasonable cause for the failure to remit the withheld taxes or any portion of the withheld taxes and that the employer acted in good faith.

2. If an employer fails to remit to the Administrator amounts that have been withheld under this section, any Responsible Officer, Partner, Member, or Employee of the employer is personally responsible for the amounts that were withheld but not remitted. A Responsible Officer, Partner, Member, or Employee is included in the definition of "employer." This subsection specifically adopts the criteria set forth in OAR 150-316-0243(2) and (3) to determine whether an individual is a Responsible Officer, Partner, Member, or Employee.
3. The Administrator is authorized to collect from the Employer, including any individuals who are included in the definition of employer, pursuant to subsection 2 above, or any combination thereof, up to 100 percent of the tax that was withheld but not remitted to

the Administrator. In addition, the employer is subject to interest for unpaid taxes as set forth in Chapter 7.05.

- (d) Credit for Tax Withheld. If the tax has actually been withheld by an employer and reported to the Administrator, credit or refund will be made to the employee even though the employer has not paid the tax to the Administrator. When the employer has neither reported nor paid the tax required to be withheld from an employee's wages but the employee submits evidence proving to the satisfaction of the Administrator that the employer actually did withhold the tax, the Administrator will allow the employee credit or refund for the amount so proved. Ordinarily, minimum satisfactory evidence will consist of a pay statement from the employer showing the amount of tax withheld and an affidavit of the employee as to the facts upon which the claim for credit or refund is based.

#### **7.06.130 Withholding Reconciliation by Employer for Payment of Withheld Tax**

- (a) Quarterly Withholding Reconciliation. On or before the last day of the month following the quarter in which withholdings pursuant to 7.06.120(a) have been made, the employer must file a quarterly tax report. If the due date is on a weekend or federal holiday, the report is due the next business day.
- (b) Annual Withholding Reconciliation. On or before the last day of January following any calendar year in which withholdings pursuant to 7.06.120(a) have been made, the employer must file with the Administrator a reconciliation of taxes withheld and taxes remitted. If the due date is on a weekend or federal holiday, the reconciliation is due the next business day.
- (c) The Administrator will determine by administrative rule the required format and information necessary to comply with subsections (a) and (b) above.

#### **7.06.140 Final Tax Return(s) of Deceased Taxfiler**

The Administrator may grant a fiduciary's request or enter into a settlement agreement with respect to the estates of decedents that are consistent with ORS 316.387 and corresponding Oregon Administrative Rules.

#### **7.06.150 Severability**

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

**CHAPTER 7.07**

**BUSINESS INCOME TAX**

| <b>Section</b> | <b>Title</b>                                |
|----------------|---|
| 7.07.010       | Title                                       |
| 7.07.015       | Administration of Business Income Tax Law   |
| 7.07.020       | Definitions                                 |
| 7.07.030       | Business Income Tax Imposed                 |
| 7.07.040       | Effective Date and Reauthorization; Term    |
| 7.07.050       | Tax Exemptions                              |
| 7.07.060       | Presumption of Doing Business               |
| 7.07.070       | Income Determinations                       |
| 7.07.080       | Apportionment of Income                     |
| 7.07.090       | Presumptive Tax                             |
| 7.07.100       | Reporting for Pass-through Through Entities |
| 7.07.110       | Severability                                |

### **7.07.010 Title**

This chapter is known and may be cited as the Metro Business Income Tax Law.

### **7.07.015 Administration of Business Income Tax Law**

The Business Income Tax Law will be administered under the provisions set forth in this chapter and Metro Code Chapter 7.05, as applicable.

### **7.07.020 Definitions**

For the purpose of this chapter, the terms used are defined as provided in in Chapter 7.05, unless the context requires otherwise.

### **7.07.030 Business Income Tax Imposed**

A tax of one percent is imposed on the net income of each person doing business within the District.

### **7.07.040 Effective Date and Reauthorization; Term**

- (a) The Metro Business Income Tax takes effect in Tax Year 2021 (Tax Year beginning on or after January 1, 2021).
- (b) The Metro Business Income Tax will remain in effect for all periods through Tax Year 2030 (Tax Year beginning on or after January 1, 2030).
- (c) After Tax Year 2030, the tax will expire unless reauthorized by Metro voters on or before that date. After the tax expires, Metro or the entity authorized to collect the Business Income Tax may continue to take all reasonable and necessary actions to ensure that taxes still owing are paid in full.
- (d) The payment of a tax required under this chapter and the acceptance of that tax payment does not entitle a taxfiler to carry on any business not in compliance with all the requirements of this code and all other applicable laws.

### **7.07.050 Tax Exemptions**

The following exemptions apply:

- (a) Small Business Exemption. A person whose gross receipts from all business income, both within and without the District, that is equal to or less than \$5 million is exempt from the payment and filing requirements of the tax set forth in this chapter.
- (b) Sole Proprietorships and Disregarded Entities. Sole proprietorships and disregarded entities owned by an individual are not subject to tax under this chapter and are subject to tax under the Personal Income Tax Law in Chapter 7.06.
- (c) Exemptions Required by Law. A person whom Metro is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon or the Metro Charter is exempt from payment of the tax set forth in this chapter.
- (d) Corporations exempt from the State of Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.920 to 317.930 must pay a tax based solely on such income.
- (e) Trusts exempt from federal income tax under Internal Revenue Code Section 501, provided that any exempt trust subject to tax on unrelated business income and certain other activities under Internal Revenue Code Section 501(b) are subject to the tax under this chapter based solely on that income.
- (f) Any person whose only business transactions are exclusively limited to operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.
- (g) Notwithstanding the exemptions listed in subsections (a)-(f), the Administrator may require the filings of tax returns or other documentary verification of any exemption claimed under this section.

#### **7.07.060 Presumption of Doing Business**

A person is presumed to be doing business in the District and subject to this chapter if engaged in any of the following activities:

1. Advertising or otherwise professing to be doing business within the District;
2. Delivering goods or providing services to customers within the District;
3. Owning, leasing or renting personal or real property within the District;



4. Engaging in any transaction involving the production of income from holding property or the gain from the sale of property, which is not otherwise exempted in this chapter. Property may be personal, including intangible, or real in nature;
5. Engaging in any activity in pursuit of gain which is not otherwise exempted in this chapter; or
6. Engaging in any activity that constitutes substantial nexus with the District.

#### **7.07.070 Income Determinations**

The net income arising from any business, as reportable to the State of Oregon (State) for corporation, S-corporation, partnership or trust excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back is subject to the Metro Business Income Tax.

- (a) Partnerships, S-corporations, limited liability companies (excluding disregarded entities), limited partnerships, limited liability partnerships, family limited partnerships, estates, and trusts are liable for the business tax and not the individual partners, shareholders, members, beneficiaries or owners. The income of these entities must include all income received by the entity including ordinary income, interest and dividend income, income from sales of business assets and other income attributable to the entity.
- (b) If one or more persons are required or elect to report their income to the State for corporation excise or income tax purposes in a consolidated, combined or joint return, a single return must be filed by the person filing such return. In such cases, net income means the net income of the consolidated, combined or joint group of taxfilers before any allocation or apportionment for operation out of the state, or deduction for a net operating loss carrying-forward or carry-back.
- (c) The absence of reporting income to the Internal Revenue Service or the State of Oregon does not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under Section 7.05.130.
- (d) Estates and trusts. In determining income for estates and trusts, income is measured after distribution of profits to beneficiaries. No additional deduction is allowed.
- (e) Nonbusiness income. In determining income under this section, an allocation is allowed for nonbusiness income as reported to the State of Oregon. However, income treated as nonbusiness income for State of Oregon tax purposes may not necessarily be defined as nonbusiness income under the Business Income Tax Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business are treated as business

income for purposes of the Business Income Tax Law. Income derived from non-unitary business functions reported at the state level may be considered nonbusiness income. Non-unitary income will not be recognized at an intra-state level. The taxfiler has the burden of showing that income is nonbusiness income.

- (f) Certain Deductions Not Allowed. In determining income, no deduction is allowed for:
1. Taxes based on or measured by net income;
  2. The federal built-in gains tax; or
  3. The City of Portland Clean Energy Surcharge.
- (g) Ordinary gain or loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property must be included as ordinary gain or loss.
- (h) Net operating loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75% of the income determined for the current tax year before this deduction but after all other deductions from income allowed by this section and apportioned for business activity both within and without the District.
1. When the operations of the taxfiler from doing business both within and without the District result in a net operating loss, that loss will be apportioned in the same manner as the net income under Section 7.07.080. A net operating loss may not be carried forward from any tax year during which the taxfiler conducted no business within the District or the taxfiler was otherwise exempt from payment of the Business Income Tax unless specifically provided for by administrative rule or written policy.
  2. In computing the net operating loss for any tax year, the net operating loss of a prior tax year is not allowed as a deduction.
  3. The net operating loss of the earliest tax year available must be exhausted before a net operating loss from a later tax year may be deducted.
  4. The net operating loss in any tax year is allowed as a deduction in any of the five succeeding tax years until used or expired. Any partial tax year will be treated the same as a full tax year in determining the appropriate carry-forward period.

#### **7.07.080 Apportionment of Income**

- (a) "Jurisdiction to tax" occurs when a person engages in business activities in a jurisdiction that is not protected from taxation by Public Law 86- 272 (15 U.S.C. Section 381-384). Public Law 86-272 applies to interstate sales of tangible personal property. For purposes of the

Business Income Tax Law, the limits imposed by Public Law 86-272 for interstate jurisdiction to tax are also presumed to apply on an intrastate basis. If a taxfiler's business is based in the District, a taxfiler must have business activity outside the District that results in a jurisdiction to tax outside the District to apportion the income of the business. Without jurisdiction to tax outside the District, all income of a business is taxable by Metro.

- (b) "Business activity" means any of the elements of doing business. The income reportable as income earned from business activity within the District will include all business income from sources within the District that is taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this chapter.
- (c) In computing the tax, taxfilers that have income from business activity both within and without the District must determine the income apportioned to the District by multiplying the total net income from the taxfiler's business by a fraction, the numerator of which is the total gross income of the taxfiler from business activity in the District during the tax year, and the denominator of which is the total gross income of the taxfiler from business activity everywhere during the tax year.
- (d) In determining the apportionment of gross income within the District under subsection (c):
  - 1. Sales of tangible personal property are deemed to take place in the District if the property is delivered or shipped to a purchaser within the District regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the District to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the District.
  - 2. Sales other than sales of tangible personal property are deemed to take place in the District, if the income producing activity is performed in the District.
- (e) Certain industries or incomes are subject to specific apportionment methodologies. These methodologies are described in administrative rules adopted in accordance with Section 7.05.070 or Metro ordinance. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales will be used in cases in which the Administrator has not adopted a rule regarding the apportionment of that industry or income. When gross sales as reported to Oregon are used for apportionment purposes, those gross sales are defined as gross income for apportionment purposes under this chapter. All apportionment methodologies directed under this subsection will be a single factor gross income apportionment as directed under subsection 7.07.080 (c) and subsection 7.07.080 (d). In those specific cases where the state has directed allocation of income, that income will be apportioned for purposes of this chapter, unless allocation is otherwise allowed in this chapter.
- (f) If the apportionment provisions of subsection (c) do not fairly represent the extent of the taxfiler's business activity in the District and result in the violation of the taxfiler's rights

under the Oregon Constitution or the United States Constitution, the taxfiler may petition the Administrator to permit the taxfiler to:

1. Use the method of apportionment used by the taxfiler under the applicable laws of the state imposing taxes upon or measured by net income; or
2. Use any other method to effectuate an equitable apportionment of the taxfiler's income.

#### **7.07.090 Presumptive Tax**

- (a) If a person fails to file a return, a rebuttable presumption exists that the tax payable amounts to \$500 for every tax year for which a return has not been filed.
- (b) Nothing in this section prevents the Administrator from assessing a tax due that is less than or greater than \$500 per tax year.
- (c) If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this section will be considered a tax return. Presumptive taxes assessed under this section are considered filed documents and are subject to the time limitations for deficiencies and refunds as described in Metro Code Section 7.05.150.
- (d) Taxes determined under this section are subject to penalties and interest from the date the taxes should have been paid as provided in Section 7.05.170 in accordance with Sections 7.05.260 and 7.05.280. The Administrator will send notice of the determination and assessment to the taxfiler.

#### **7.07.100 Reporting for Pass-through Through Entities**

- (a) Chapter 7.06, Personal Income Tax, allows a deduction for pass-through income subject to tax under this chapter. For purposes of this section, pass-through income subject to tax means income from a business whose net income is taxed on the owners' or partners' personal tax returns. This includes, but is not limited to, entities taxed as partnerships and S-corporations.

(b) A business must ~~calculate and~~ report to the owners or partners with the Schedule K-1 that:

1. It was subject to the Metro Business Income Tax for the stated tax year; and

2. The Metro apportionment percentage as determined under Section 7.07.080. ~~the amount allowed in subsection (a) to the owners or partners. The~~

~~total amount of pass-through income subject to tax an entity reports to owners or partners on Schedule K-1 cannot exceed the taxable income of the business for that tax year.~~

#### **7.07.110 Severability**

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

IN CONSIDERATION OF

- ORDINANCE 21-1465, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTERS 7.05, 7.06 AND 7.07 TO ADD CERTAIN CLARIFICATIONS AND MAKE HOUSEKEEPING CHANGES

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Date: August 23, 2021  
Department: Planning and Development  
Meeting Date: September 9, 2021

Prepared and Presented by: Rachael  
Lembo  
Length: 10 minutes

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**ISSUE STATEMENT**

In December 2020, the Metro Council adopted Metro Code Chapters 7.05, “Income Tax Administration for Personal and Business Taxes”, 7.06 “Personal Income Tax”, and 7.07 “Business Income Tax”. These chapters codified certain provisions of the Supportive Housing Services Measure approved by the voters, and established code to implement the taxes imposed by the measure in an effective and efficient manner.

After adoption of the income tax code, Metro continued work on implementation of the tax collection system with our tax administrator, the City of Portland Revenue Division. Administrative rules were developed with a subsection of our Tax Implementation Advisory Table, posted for public comment and hearing, and adopted by our COO in July 2021.

As we referred to our code throughout this process we identified areas for housekeeping updates or certain clarifications. The proposed amendments do not change the intent of the code as adopted by Council, but clarify that intent.

**ACTION REQUESTED**

Staff requests adoption of Ordinance No. 21-1465.

**IDENTIFIED POLICY OUTCOMES**

The proposed amendments to Metro income tax codes clarify the intent of the code adopted in December 2020. These codes established rules to implement the taxes imposed by the measure in an effective and efficient manner.

**POLICY OPTIONS FOR COUNCIL TO CONSIDER**

- Adoption of this ordinance. This results in more clarity in the income tax codes, which guide the tax collection system.
- Adoption of this ordinance with revisions or modifications as described by Council.
- Rejection of this ordinance with other direction to staff. The existing income tax code would remain in place, but proposed amendments would not be made.

## **STAFF RECOMMENDATIONS**

Staff recommend that Metro Council adopt Ordinance No. 21-1465.

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

Metro staff formed a tax implementation advisory table in June 2020 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 multiple times and provided input on development of the tax codes.

Council provided direction on code development at a November 2020 work session, and three Council meetings in December 2020. The code was adopted on December 17, 2020.

Tax collection began in April 2021. Collections are expected to begin slowly, as is common with any new tax. Through July 2021 total collections are \$2 million, and \$1.8 million has been distributed to our local implementation partners.

## **BACKGROUND**

In May 2020 voters in greater Portland approved a measure to raise money for supportive housing services for people experiencing homelessness or at risk of experiencing homelessness.

The program is funded by two separate taxes: a 1% personal income tax on taxable income above \$125,000 for individuals and \$200,000 for those filing jointly, and a 1% business income tax on net income for businesses with gross receipts above \$5 million.

Other Metro programs and projects are funded through bond measures or property tax levies. This is the first program at Metro that uses personal and business income taxes, and it is the first local personal income tax in the region since Multnomah County's personal income tax ended in 2006.

Materials following this page were distributed at the meeting.



# Resolution 21-5194: 2025-2027 Regional Flexible Funds Allocation (RFFA) Program Direction

Metro Council  
September 9, 2021



Metro



# Regional Flexible Funds

Federal transportation dollars  
administered by Metro

Purpose is to strategically invest  
in RTP priorities

One part of funding administered  
through the MTIP



# 2025-27 RFFA Program Direction

Statement of intent to target regional funds to achieve regional priorities

Sets objectives and outcomes for allocation process

Builds upon previous Council direction



DRAFT 2025-2027 Regional Flexible Funds Allocation Program Direction

Resolution 21-5194

Approved by JPACT July 15, 2021

# Projected funding: \$142,350,000

Step 1A  
\$65,280,000

- Bond repayment commitment

Step 1B  
\$35,820,186

- Regionwide investments
- System & corridor planning
- MPO responsibilities

Step 2  
\$41,249,814

- Capital project investments

# Updates from 22-24 Direction

Changed Step 2  
funding categories  
to single category

Multiple-outcome  
projects focused on  
four RTP Investment  
Priorities



Equity



Climate



Safety



Congestion

# Developing the Program Direction

- Feb. – June: Eight meetings and workshops conducted to discuss how to update RFFA Program Direction
- Over 100 people (TPAC, jurisdiction staff and community members) participated and provided their thoughts and insights

# Step 2 project criteria

## Equity

- Increased accessibility
- Increased access to affordable travel options

## Climate

- Reduced emissions from vehicles
- Reduced drive-alone trips

## Safety

- Reduced fatal and serious injury crashes for all modes

## Congestion

- Increased reliability
- Increased travel efficiency
- Increased travel options
- Reduced drive-alone trips

# Trails bond funding (\$20 million)

- Sharing application, outcomes evaluation, risk assessment with RFFA
- Separate decision-making processes for each funding source
- One application for partners, improved regional coordination



# 2025-27 RFFA process timeline

## 2021: Program Direction

Council work session: Mar. 9

Public workshops:  
Mar. 10, Apr. 8, Apr. 28

TPAC:  
Feb. 5, Apr. 2, May 7  
**June 4: recommendation**

JPACT:  
Mar. 18, May 20  
**July 15: action**

Council:  
**September 9: action**

## 2021-22: Step 2 Project Solicitation & Evaluation

Project call:  
November 2021

Proposals due:  
February 2022

Technical Analysis,  
Risk Assessment:  
March, April

## 2022: Deliberation & Adoption

Public comment,  
CCC priorities:  
May, June

TPAC/JPACT discussion:  
June-Sept.

JPACT  
recommendation,  
Council action: Oct.

# Discussion and request for adoption of Resolution 21-5194

