

Council meeting agenda

Thursday, March 23, 2023

10:30 AM

<https://zoom.us/j/615079992>, or
877-853-5257 (toll free) (Webinar ID:
615079992)

This Council Meeting will adjourn into an Executive Session

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 877-853-5257 (toll free) (Webinar ID: 615079992)

1. Call to Order and Roll Call

2. Public Communication

Public comment may be submitted in writing. It will also be heard by electronic communication (video conference or telephone). Written comments should be submitted electronically by emailing legislativecoordinator@oregonmetro.gov. Written comments received by 4:00 p.m. 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 503-813-7591 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. Those wishing to testify in person should fill out a blue card found in the back of the Council Chamber.

Those requesting to comment virtually during the meeting can do so by joining the meeting using this link: <https://zoom.us/j/615079992> (Webinar ID: 615079992) or 888-475-4499 (toll free) and using the "Raise Hand" feature in Zoom or emailing the legislative coordinator at legislativecoordinator@oregonmetro.gov. Individuals will have three minutes to testify unless otherwise stated at the meeting.

3. Consent Agenda

- 3.1 Resolution No. 23-5318, For the Purpose of Confirming
the Appointment of David Penilton to the Metropolitan
Exposition Recreation Commission to Fill the Vacant
Position for Commissioner Erickson's Entire Term
Attachments: [Resolution No. 23-5318](#)

[RES 23-5318](#)

- 3.2 Consideration of the January 5, 2023 Council Meeting Minutes [23-5837](#)

Attachments: [010523c Minutes](#)

- 3.3 Consideration of the January 19, 2023 Council Meeting Minutes [23-5838](#)

Attachments: [011923c Minutes](#)

- 3.4 Consideration of the February 9, 2023 Council Meeting Minutes [23-5839](#)

Attachments: [020923c Minutes](#)

4. Ordinances (First Reading and Public Hearing)

- 4.1 Ordinance No. 23-1492, For the Purpose of Amending Metro Code Chapter 7.05 to Improve Clarity Regarding Penalties and Interest and Other Housekeeping Updates and Declaring an Emergency [ORD 23-1492](#)

Presenter(s): Josh Harwood, Metro

Attachments: [Ordinance No. 23-1492](#)
[Exhibit A](#)
[Staff Report](#)

5. Chief Operating Officer Communication

6. Councilor Communication

7. Adjourn into Executive Session

The meeting will be an Executive Session held pursuant under ORS 192.660 (2)(d); To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

Only members of the news media and designated staff will be allowed to attend the executive session. If you are a member of the news media wish to attend the executive session, please call or email the Legislative Coordinator at least 24 hours before the noticed meeting at legislativecoordinator@oregonmetro.gov or 503-812-7591. Representatives of the news media and all other attendees are specifically directed not to disclose information that is the subject of the Executive Session.

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានការប្រកាសស្តីពីការមិនរើសអើងសូមចូលទស្សនាគេហទំព័រ www.oregonmetro.gov/civilrights។
បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ មុនថ្ងៃប្រជុំដើម្បីអាចឱ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក។

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

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Resolution No. 23-5318, For the Purpose of Confirming the Appointment of David Penilton to the Metropolitan Exposition Recreation Commission to Fill the Vacant Position for Commissioner Erickson's Entire Term

Consent Agenda

Metro Council Meeting
Thursday, March 23rd, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE)	RESOLUTION NO. 23-5318
APPOINTMENT OF DAVID PENILTON TO THE)	Introduced by Council President Lynn Peterson
METROPOLITAN EXPOSITION RECREATION)	
COMMISSION TO FILL THE VACANT POSITION FOR		
COMMISSIONER ERICKSON'S ENTIRE TERM		

WHEREAS, the Metro Code, Section 6.01.030(a) provides that the Metro Council President shall appoint all members to the Metropolitan Exposition Recreation Commission ("the Commission"); and

WHEREAS, the Metro Code, Section 6.01.030(b) provides that the Metro Council President's appointments to the Commission are subject to confirmation by the Metro Council; and

WHEREAS, Commissioner John Erickson's resignation from the Commission as of December 7, 2022 created a vacancy as defined in Metro Code Section 6.01.030(f) of the Clackamas County nominee under Metro Code Section 6.010.030(d)(1); and

WHEREAS, the Metro Code, Section 6.010.030(g) requires that the Metro Council fill vacancies on the Commission pursuant to the procedure governing the initial appointment of voting members as described in Metro Code Section 6.01.030(e)(1); and

WHEREAS, pursuant to Metro Code, Sections 6.01.030(d)(1) and (f), Clackamas County has nominated David Penilton as a candidate to replace John Erickson as a member of the Commission for the remainder of Mr. Erickson's term due to Mr. Erickson's resignation from the Commission and Commissioner Erickson's term runs through January 26, 2026; and

WHEREAS, Resolution 23-5312 only appointed Commissioner Penilton through January 26, 2024 and this Resolution clarifies that Mr. Penilton's term will end on January 26, 2026 in accordance with Commissioner Erickson's term.

WHEREAS, the Metro Council President hereby re-submits her appointment of David Penilton to the Metro Council for confirmation; and

WHEREAS, the Metro Council finds that David Penilton has the experience and expertise to make a substantial contribution to the Commission's work; now therefore

BE IT RESOLVED that the Metro Council hereby confirms the Council President's appointment of David Penilton as a member of the Metropolitan Exposition Recreation Commission, commencing on January 26, 2023 through January 26, 2026.

ADOPTED by the Metro Council this 23 day of March 2023.

Lynn Peterson, Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney

Consideration of the January 5, 2023 Council Meeting

Consent Agenda

Metro Council Meeting
Thursday, March 23rd, 2023

Metro

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



Metro

Minutes

Thursday, January 5, 2023

10:30 AM

**Metro Regional Center, Council chamber,
<https://youtu.be/eoPbEObjbuk>, <https://zoom.us/j/615079992>, or
877-853-5257 (toll free) (Webinar ID: 615079992)**

Council meeting

Council President Peterson called the Metro Council Meeting to order at 10:30 a.m.

She noted that Ordinance No. 22-1487 For the Purpose of Amending Metro Code Section 2.02.010 was pulled from the agenda.

Present: 7 - Council President Lynn Peterson, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, Councilor Gerritt Rosenthal, Councilor Duncan Hwang, and Councilor Ashton Simpson

2. Public Communications

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

No members of the public testified.

Seeing no further discussion on the topic, Council President Peterson moved on to the next agenda item.

3 Consent Agenda

Council President Peterson called for a motion to approve the Consent Agenda.

A motion was made by Councilor Rosenthal, seconded by Councilor Gonzalez, that this Consent Agenda be approved. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, Councilor Rosenthal, Councilor Duncan Hwang, and Councilor Ashton Simpson

3.1 Consideration of the July 14, 2022 Council Meeting Minutes

Attachments: [071422 Minutes](#)

3.2 Consideration of the July 28, 2022 Council Meeting Minutes

Attachments: [072822 c Minutes](#)

- 3.3 Resolution No. 22-5299, For the Purpose of Amending Six Existing Projects to Enable Pending Federal Approval Steps and Phase Obligations to Occur (DC23-04-DEC)

Attachments: [Resolution 22-5299](#)
[Exhibit A](#)
[Staff Report](#)

- 3.4 Resolution No. 23-5303 For the Purpose of Organizing the Metro Council and Confirming the Deputy President

Attachments: [Resolution No. 23-5303](#)
[Exhibit A](#)
[Staff Report](#)

- 3.5 Resolution No. 23-5304, For the Purpose of Confirming Members of the Metro Regional Waste Advisory Committee

Attachments: [Resolution No. 23-5304](#)
[Exhibit A](#)
[Exhibit B](#)
[Exhibit C](#)
[Staff Report](#)

4. Ordinances (First Reading and Public Hearing)

- 4.1 **Ordinance No. 22-1487**, For the Purpose of Amending Metro Code Section 2.02.010

Attachments: This item was removed from the agenda.

Seeing no further discussion on the topic, Council President Peterson moved on to the next agenda item.

5. Chief Operating Officer Communication

Marissa Madrigal provided an update on the following events or items:

- Metro experienced closures at multiple sites due to winter weather conditions.
- The OCC was designated a severe weather shelter from 12/22-12/24 and she thanked all the staff who helped keep hundreds of people warm.
- The Planning Research, and Development team held a townhall at Clackamas Community College about the UGB land-use exchange.
- The Styrofoam recycling pilot program at Metro South Transfer Station is coming to an end.
- She congratulated and thanked former interim GAPD Director Tyler Frisbee for her work as she takes on a new position with the Nature Conservancy.

6. Councilor Communication

Councilors provided updates on the following meetings and events:

- **Councilor Rosenthal** updated Council regarding the Oregon Zoo Foundation's gala dinner. He also thanked OCC and Expo Center staff for addressing the structural damage caused by the winter weather.
- **Councilor Lewis** updated Council regarding the last MERC meeting.

- **Councilor Simpson** thanked Council and Metro staff for their warm welcomes, and thanked staff who helped run the severe weather shelters over the holidays.
- **Council President Peterson** informed Council that the IBR team applied for but did not receive a USDOT grant. They did not expect to receive it and will apply again next year.

7. Adjourn

There being no further business, Council President Peterson adjourned the Metro Council Meeting at 10:47 a.m.

Respectfully submitted,

Nathan Kim

Nathan Kim, Legislative Assistant

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 5, 2023

No additional materials distributed.

PLEASE NOTE: Official copies of legislation will be available in electronic format via format via [Metro Online Records](#). For assistance, please contact Becky Shoemaker, Metro Records Officer at ext. 1740.

Consideration of the January 19, 2023 Council Meeting Minutes

Consent Agenda

Metro Council Meeting
Thursday, March 23rd, 2023

Metro

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



Metro

Minutes

Thursday, January 19, 2023

10:30 AM

Metro Regional Center, Council chamber,
<https://youtu.be/lpC-5ZtnnNE>, <https://zoom.us/j/615079992>, or
877-853-5257 (toll free) (Webinar ID: 615079992)

Council meeting

1. Call to Order and Roll Call

Council President Peterson called the Metro Council Meeting to order at 10:30am

Present: 7 - Council President Lynn Peterson, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, Councilor Gerritt Rosenthal, Councilor Duncan Hwang, and Councilor Ashton Simpson

2. Public Communication

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

There was none.

3. Ordinances (First Reading and Public Hearing)

- 3.1 Ordinance No. 23-1488, For the Purpose of Amending the Urban Growth Boundary to Include Land Adjacent to the City of Tigard in Exchange for Removing a Substantially Equivalent Amount of Land in Clackamas County

Attachments: [Ordinance No. 23-1488](#)
[Exhibit A-1](#)
[Exhibit A-2](#)
[Exhibit A-3](#)
[Exhibit A-4](#)
[Exhibit B](#)
[Exhibit C](#)
[Exhibit D](#)
[Attachment 1 to Exhibit D](#)
[Attachment 2 to Exhibit D](#)
[Staff Report](#)
[Supplemental Staff Report](#)
[Attachment 1 to Supplemental Staff Report](#)

Council President Peterson called on Andy Shaw (he,him),
Metro

[Ted Reid] [he/him], to present to Council.

President Peterson gave background on the project and why it the UGB exchange was proposed. She reminded people which areas are being proposed for the exchange and why.

Staff pulled up the *Proposed Urban Growth Boundary Exchange Metro Council public hearing Presentation* to present to Council.

Andy gave a timeline of the process and discussed who has been engaged. Staff gave an overview of the proposed River Terrace 2.0 project from the City of Tigard. Andy explained the process for identifying exchange areas. Finally, he reviewed what staff heard from the partners that were engaged and explained the contents of Ordinance No. 23-1488.

Public Hearing:

Council President Peterson opened the meeting to members of the public wanting to testify on Ordinance No. 23-1488

Marilyn Silver: testified against the ordinance, that they did not receive a postcard notifying them about the UGB, does not believe it is necessary to address the current housing crisis.

Roger clarified that Marilyn would have received a postcard, but did not include information about town halls.

Larry Thompson: testified against the ordinance and that the land remain in the UGB, that their farm is 22% of the land that will be affected by the land swap. Their family has farmed the land for 75 years, and were added to the UGB.

They believe Metro's housing plans are bad for the community's health. Instead, they proposed their own plan for Metro's approval, created with the help of the University of Oregon's Sustainable Architecture Dept. They also mentioned that notification by Metro was insufficient.

Councilor Nolan asked who Larry has discussed their plans with, and specifically asked if they have spoken with the Clackamas County Planning Agency.

Larry has spoken with the Cities of Gresham and Happy Valley and Damascus, that the conversations were very productive, and provided a more detailed explanation of their plans using a visual aid. They emphasized the importance of reconnecting community members with nature, which their plan will do.

Councilor Rosenthal asked two questions:

- How would the UGB changes affect their farming operations?
- What sort of time frames are Gresham and Happy Valley considering?

Larry has no plans to change their operations, but the value of their land will drop significantly and affect their immediate financial situation. They believe they will not be alive if their plan is realized.

Councilor Simpson asked if Larry's plan included affordable housing, and who would those units go to. He also asked if there were any transportation considerations to connect potential residents to non-agricultural economic opportunities.

Their plans include affordable multi-family and single family

housing units.

Larry's plan did not consider transportation like that, but ODOT has had some discussions about extending SE 257th across their farm and creating another thoroughfare for the area.

Council President Peterson shared her appreciation for Larry's plans and looked forward to following up with him.

Larry concluded by mentioning that their farm is organic and the EPA gave them a very high rating.

Victoria Frankeny (Tualatin River Keepers): testified that Metro should conduct a water study and address the existing stormwater runoff and erosion issues along the Tualatin River before approving the UGB land swap.

Mike Meyer: who owns property in Kingston Terrace and testified against the Ordinance. They compared affordable housing to drug use, a quick fix that does not consider the consequences. They provided written testimony with more detailed information. The area will become a regional traffic arterial for Fisher Road and 99W, which do not have the capacity.

Michele Gila (Portland Metropolitan Association of Realtors): testified in support of the ordinance and thanked Council for their leadership on the issue.

Andrea D'Amico: testified against the ordinance. They believe there will not be sufficient community and emergency services for the area. The land will be very expensive to develop and will increase property taxes for the surrounding area. Consequences for surrounding

wildlife has not been considered either. Finally, they invited Council to come and visit the area.

Preston Korst (Homebuilding Association of Greater Portland): testified in support of the ordinance, applauded the public engagement done, and urged Council and the region to build more housing.

Dirk Schlagenhauser: testified that the postcard they received was incorrect. Their parents own property in Damascus and was confused by the changes. They also testified that Council should remove more land from other areas, and remove less land from Damascus.

Ted explained that their parent's property is not part of the UGB exchange.

Erik Hamacher: testified against the ordinance. They feel like the swap is being rushed and they did not receive prompt notification about the process.

Brett Morgan (1000 Friends of Oregon): testified in support of the ordinance but encouraged Council to make more considerations around natural resources, hazard planning, and transportation.

Larry Jacobs: is a property owner in the River Terrace 2.0 area and testified in support of the ordinance.

Braxton Chambers: testified in support of the ordinance and that more safety measures be added to the surrounding roads, particularly the hard curve on Scholl's Ferry Road between Tile Flat and Clark Hill.

Emily Tritsch: testified on behalf of the City of Tigard in

support of the ordinance.

Janet Black testified concerning the additional traffic that would be created by the ordinance and Council consider the combined effect of both Kingston and River Terrace 2.0's growth.

Kevin testified and asked what additional safety measures would be added to Scholls Ferry Rd.

Emily Tritsch explained that the City of Tigard would coordinate with the county regarding safety along that corridor and would be happy to follow up.

Metro Attorney recommended that Council provide more open instruction for Staff so they can take all public comment into consideration.

Council Discussion:

Council President Peterson asked what would happen to the land that will be removed from the UGB.

Roger Alfred explained that the land would remain undesignated for now, but would have the possibility of being designated in the future.

Councilor Rosenthal asked if the land is undesignated, how long would the process of designating the land as an urban reserve take?

Roger explained that this is a new process for Metro and there is no clear legal guidance for this. This would most

There would be a lot of coordination, but Oregon City would no longer be able to develop the area to address future housing needs.

Seeing no further discussion on the topic, Council President Peterson moved on to the next agenda item.

Parks and Nature Annual Report

Council President Peterson called on Jon Blaser (he,him), Metro to present to Council.

Staff pulled up the Parks & Nature Annual Report to present to Council.

Jon went over the Parks and Nature Departments investments over the last year. He gave an overview of habitat restoration a

4. Presentations

Jon went over the Parks and Nature Departments investments over the last year. He gave an overview of habitat restoration and maintenance work, and then explained how the department is facilitating access to nature across the region. He also explained improvements made to parks over the last year. Jon then went over the department's diversity, equity and inclusion goals as well as community education work. He reported on specific local share programs and how past bond measures are protecting land. He concluded by going over the department's goals for the next year.

Council Discussion

Councilor Simpson thanked Jon and the P&N Dept. for working with him, prior to his election to Council, to get Black families into nature.

Councilor Simpson thanked Jon and the P&N Dept. for working with him, prior to his election to Council, to get Black families into nature.

Councilor Gonzalez appreciated P&N's willingness to be innovative with their work and asked when the 2006 bond funds will be depleted. He also asked what user experiences has Staff encountered in 2022, given the dynamic nature of the year.

Jon explained that remaining 2006 bond funds were absorbed into P&N's program fund. He did not have a specific number or timeline, but the funds have been designated for upcoming projects and he would be happy to follow-up with Council.

Staff saw a significant increase in visitors, which warmer climates contributed to. This meant less time for maintenance and conservation for Staff, though they are working on addressing that issue.

Councilor Lewis appreciated Staff's responsiveness and willingness to work with indigenous tribes and cultural conservation in general, and if they require more funding. She also asked what gaps in services left by local jurisdictions Staff sees, particularly around tree canopy work, has Metro taken on that responsibility, and what opportunities it has created.

Jon informed Council that they are recruiting for in-house tribal liaison positions and are implementing more training around tribal sovereignty for Staff. He added that P&N is very busy with recruitment, and is looking to streamline the process.

Staff has been busy with other work, and they have not taken a close look at how other jurisdictions are doing their tree canopy work.

Councilor Hwang appreciated the inclusive nature of Staff's planning work, particularly around Multnomah Park and Lone Fir, and asked about P&N's future cultural conservation plans.

Jon explained that they are currently working with archaeologists and other contractors to preserve any sites, remains, and artifacts they encounter, including Multnomah Park and Lone Fir.

He added that Staff is currently discussing what it may look like to have an in-house Historic Preservation Office. They are also re-evaluating their entire portfolio to be more culturally sensitive. GAPD will also be bringing a more specific proposal for cultural heritage preservation.

Councilor Rosenthal had multiple comments and questions:

- Is there a way to make Staff's waterway and preservation work more public to address accessibility issues?
- Does Staff have capacity to expand public engagement and education?
- The region is predicted to lose 98% of its ash trees, so has Staff been in contact with the State Forester regarding this issue?
- Finally, he voiced his support for any work with Tualatin Hills to make Cooper Mountain a regional park.

Jon clarified that P&N is in contact with the State Forester and other committees related to natural preservation. Staff is also working on reaching and educating more of the public.

4.1 Parks and Nature Annual Report

Attachments: [Staff Report](#)
[Attachment 1](#)

5. Chief Operating Officer Communication

Marissa Madrigal provided an update on the following events or items:

- The 2022 GLEAN Annual Artist Residence Exhibit will be opening Thursday, February 2nd, at the Parallax Art Center.
- Today is the last day of free parking at Metro's Parks and Nature sites, but there will be free parking on Feb. 16th and 20th
- Metro was awarded the Distinguished Budget Award for FY 2022-23 by the Government Finance Officer's Association (GFOA).

6. Councilor Communication

Councilors provided updates on the following meetings and events:

- **Councilor Lewis** updated Council on the Expo and RFI conversations.
- **Councilor Hwang** wished everyone a happy Lunar New Year, which is 1/20 this year.
- **Councilor Gonzalez** updated Council on this morning's JPACT meeting.

7. Adjourn

There being no further business, Council President Peterson adjourned the Metro Council Meeting at 12:43pm

Respectfully submitted,

Nathan Kim

Nathan Kim, Legislative Assistant

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 19, 2023

Item	Topic	Doc. Date	Document Description	Doc. Number
1.0	PowerPoint	01/19/2023	Proposed Urban Growth Boundary Exchange Metro Council Public Hearing Presentation	011923c-01
2.0	PowerPoint	01/19/2023	Parks and Nature Annual Report Presentation	011923c-02
3.0	Testimony	01/17/2023	Clackamas County Comments	011923c-03
4.0	Testimony	01/07/2023	Gary Vallens Testimony	011923c-04
5.0	Testimony	01/17/2023	HBA Testimony	011923c-05
6.0	Testimony	01/18/2023	Janet Black Testimony	011923c-06
7.0	Testimony	01/19/2023	John Stone Testimony	011923c-07
8.0	Testimony	01/19/2023	Larry Thompson Testimony	011923c-08
9.0	Testimony	01/19/2023	Lillian Stone Testimony	011923c-09
10.0	Testimony	01/19/2023	Marilyn Silver Testimony	011923c-10
11.0	Testimony	01/19/2023	Mike Meyer Testimony	011923c-11
12.0	Testimony	01/17/2023	Portland Metropolitan Association of Realtors Testimony	011923c-12
13.0	Testimony	01/19/2023	Roxanne Monson Testimony	011923c-13

Consideration of the February 9, 2023 Council Meeting Minutes

Consent Agenda

Metro Council Meeting
Thursday, March 23rd, 2023

Metro

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



Metro

Minutes

Thursday, February 9, 2023

10:30 AM

**Metro Regional Center Council Chamber,
<https://www.youtube.com/live/NerNLeRJc-M?feature=share>,
<https://zoom.us/j/615079992>, or 877-853-5257 (toll free) (Webinar ID:
615079992)**

Council Meeting

1. Call to Order and Roll Call

Present: 7 - Council President Lynn Peterson, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, Councilor Gerritt Rosenthal, Councilor Duncan Hwang and Councilor Ashton Simpson

2. Public Communication

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

There were two members of the public that testified:

- Maddie McDonald expressed anger and frustration for how Metro handled the Supportive Housing Services Personal Income Tax. McDonald had received a notice in the mail saying that their 2021 tax was overdue and may have to pay a fine and interest. McDonald added that Metro did nothing to inform taxpayers about the tax bill.

Council President Lynn Peterson stated that the Chief Operating Officer would make a statement after public communication was closed.

- Les Pool, Clackamas County, OR mentioned that Metro should be more careful of how it spends money. Pool mentioned that homelessness issue is getting worse, but that it is important to get the best value out of the money. Pool encouraged the Council to talk about the impact of tolling on highways.

Council President Lynn Peterson called on Marissa Madrigal (she/her), Metro, Chief Operating Officer

Madrigal mentioned that Metro had been receiving complaints from people that did not know about the tax and that a penalty waiver was available. Madrigal added that staff are working on other options to

address taxpayer concerns.

Councilor Nolan apologized for the oversight that Metro and the vendor did on the tax. They look forward to solutions of the staff. Councilor Nolan also thanked the people that testified for coming and bringing their points.

Councilor Rosenthal apologized for the confusion. He mentioned that there were people that used Intuit and TurboTax, who were not informed about the tax. Councilor Rosenthal added that with the money from the tax there has been progress, such as preventing people from losing their homes. He looked forward to recommendations from staff.

Madrigal clarified that TurboTax had included a link and a question or statement for certain incomes about people possibly owing the tax.

Councilor Lewis commented that she has had multiple conversations from her constituents. She was glad that there was now a coordinated effort. Councilor Lewis asked about how they are resolving the issue now and make it easier for people to start paying the tax when they change jobs or a change in the value of the dollar.

Madrigal explained that the American tax system is complex and trying to integrate into it is challenging. She mentioned that there are situations that cannot be predicted, such as if a person that sold stocks and their income goes above the threshold. Madrigal stated that there is no way for staff to receive that information until a person file their taxes. She explained that the city of Portland received the

information at the end of last year and was able to determine who, among those that met the threshold, had paid the tax or not.

Councilor Lewis mentioned that this was discussed at the oversight committee and that communication can be better.

Councilor Hwang asked about the steps to coordinate better with Metro's jurisdictional partners, specifically the City of Portland and Multnomah County? He also asked how to streamline the various taxes with the same mechanism for the public.

Madrigal stated that staff intended to align with current collection practices. Staff did their best to mirror the City of Portland tax collection as well as Multnomah County to hopefully streamline for the public. She expressed the importance of fully understanding various solutions before communicating, so that there is not more challenges.

Councilor Hwang commented that Metro and the jurisdictional partners should work as a team and that there needs to be better coordination amongst them.

Councilor Gonzalez mentioned that the Council is commitment to exploring options, so that people are not burdened by the tax. He stated that they and staff will do their best to make this right.

Council President Peterson thanked those that received mail on the tax and added that staff is working on more options for solutions. She thanked staff for their work on how to do it best to not cause more confusion.

Councilor Simpson stated that they need to take care of working people and make the process cleaner and smoother in the future.

Seeing no further discussion on the topic, Council President Lynn Peterson moved on to the next agenda item.

3. Consent Agenda

3.1 **Resolution No. 23-5308**, For the Purpose of Advancing Metro Eligible Unified Planning Work Program (UPWP) Projects for Inclusion in the State Fiscal Year 2023 UPWP and Completing a Scope Change for an ODOT Americas with Disabilities Curbs and Ramps Project

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

Aye: 7- Council President Peterson, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, Councilor Rosenthal, Councilor Hwang and Councilor Simpson

Attachments: [Resolution No. 23-5308](#)
[Exhibit A](#)
[Staff Report](#)

4. Ordinances (Second Reading)

4.1 **Ordinance No. 22-1487**, For the Purpose of Amending Metro Code Section 2.02.010

Presenter(s): Marissa Madrigal (she/her), Metro
Carrie MacLaren (she/her), Metro

Attachments: [Ordinance No. 22-1487](#)
[Exhibit A](#)
[Staff Report](#)

Council President Lynn Peterson stated that the first reading and public hearing for Ordinance No. 22-1487 took place on January 26, 2023.

Council President Lynn Peterson called on called on Marissa Madrigal (she/her), Metro, Chief Operating Officer, to answer questions.

There were no questions.

Council Discussion:

There was no council discussion.

A motion was made by Councilor Nolan, seconded by Councilor Simpson, that this Ordinance was adopted. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, Councilor Rosenthal, Councilor Hwang and Councilor Simpson

5. Other Business

5.1 Budget Retreat Follow Up

Presenter(s): Marissa Madrigal (she/her), Metro

Attachments: [Staff Report](#)

Council President Lynn Peterson called on Marissa Madrigal (she/her), Metro, Chief Operating Officer to present the *Budget Retreat Follow Up*.

Staff pulled up the *Budget Retreat Follow Up* to present to Council.

The presentation began with the recap of the Budget Retreat. During the recap, Madrigal discussed the financial forecast, the equity analysis and metrics, and the council priorities. Madrigal then discussed the council priorities of environment, housing, and economy. One of the priorities mentioned for environment, was transit access and pedestrian infrastructure. For housing, one priority was Supportive Housing Services. Lastly, one of the priorities for the economy was venue investments and programing. Madrigal commented on the budget timeline and the next steps. Staff will develop a proposed budget in March and the

Council will receive the proposed budget in April. Staff mentioned setting strategic vision that allows bold moves, guides work across departments, and uses metrics to understand progress. Madrigal also mentioned strategic framework, which includes Metro's commitments and guiding principles, as an appropriate container for the strategic targets. Staff noted Metro-wide strategic targets in environment and climate, housing, and economy. The presentation ended with several discussion questions for the Council.

Council Discussion:

Council President Peterson asked if the lens would still be racial equity. She also suggested to add how Metro is helping to create jobs through public-private partnerships in bringing land into urban growth boundary, getting land ready for employment, waste management and other sectors.

Madrigal explained that racial and climate justice are within the strategic framework and guiding principles.

Councilor Rosenthal commented that these are good goals, but there is no vision for a 21st or 22nd century transit system for the future growth of the area. He mentioned that the area he represents has inadequate transportation. On transportation, he noted that more can be done in terms of climate protection and in stimulating the economy. He thought that transportation was crucial.

Councilor Hwang commented that there could be recession in the future and people are having a hard time right now. He noted that the work should be focused on working people and that should be clear. He asked how they can alleviate the challenges that working people are facing such as housing, transit, and inflation.

Madrigal mentioned that the framework and the principle of shared prosperity can help with definitions. She also mentioned that they tried to think about who pays for the decision, who benefits from it and where the burden falls. Madrigal added that using the principle of shared prosperity into that could help alleviate the challenges for working people.

Councilor Simpson thanked staff for presentation. He mentioned workforce development and having conversations about public-private partnerships. He expressed concerns about people forever renting and wanted more people to have homeownership opportunities.

Councilor Nolan asked if the targets are not voted on until June, how could they be used by department directors to form their budgets.

Madrigal noted that the process to choose targets must have criteria, such as a target that Metro can make a difference in. She gave housing as an example. They can focus on that area in next year's budget and the target would further enhance that. For example, a five-year goal of a certain number of housing units. Currently they are doing as much as they can, but now they want to put a number to it.

Council President Peterson had the same question as Councilor Nolan. She expressed the need to be careful of which target is chosen and to have more conversation. She suggested that they go to community and thought leaders to make sure the target is the right measure and vetted. She mentioned that it is hard to expedite when asking people for input. President Peterson also mentioned that staff are working proposals on all three strategic target categories.

Councilor Nolan stated that setting those goals are important. They expressed concerns that the more this is delayed, the more it says that inequity is ok with the Council.

Councilor Nolan mention that there needs to be investment in infrastructure to areas less dense areas or farmland before expanding. They mentioned that there needed to be ways for the Council to support local governments as they develop UBG land and be inviting to those that want to develop.

Councilor Lewis thanked staff for their work. She noted that the three areas were the right direction, but they need to look at outputs and inputs. Councilor Lewis suggested that Metro should be aware of how the system of taxes and fees relate to each other. She commented that transit is connected to the environment, since 40 percent of the emissions reduction is from people not using single occupancy vehicles. Councilor Lewis mentioned that the approved transit budget is limited but hoped that they would look at transit funding.

Councilor Gonzalez commented that he felt that Metro underperforms on grants and suggested that department directors use leverage to get more money for transit projects. Councilor Gonzales also commented that Metro has an important role in tourism, especially with the venues. He wanted more on procurement and policies with partner agencies. Councilor Gonzales added they should have a plan for supporting small and BIPOC businesses in the region too. He felt that housing, like the production pipeline, was vague and that they need to do everything they can. He also expressed the importance of the budget cycle because of the reopening of so many things.

Madrigal stated that when they set targets, they need to make sure there are multiple ways to achieve them. For example, the ways in housing are the Affordable Housing Bond, helping cities develop their own housing or lobbying the state legislature. She mentioned that transit was a tactic to get certain outcomes. Madrigal also mentioned using coordination in have a collective impact.

Council President Peterson stated the three main areas are important and they need to figure out how transit can help. She commented that they need to include themes of leverage and racial justice into each area and then to make goals for the region.

Councilor Rosenthal agreed that there needs to specific targets, a focus on workforce and making lands available. He commented that Metro is the only entity with a regional perspective on transportation and to make a regional vision.

Councilor Nolan stated that budgets identify your proprieties. They also wanted priorities that help Metro to make choices to put their human and financial resources in certain directions. Councilor Nolan stated that if venues influence the economy, then they should talk about that.

Council President Peterson looked forward to choices that are vetted with the community and to prioritize them. She hoped that there would be one goal per area but acknowledged that there are multiple vague and conflicting goals.

6. Chief Operating Officer Communication

Marissa Madrigal provided an update on the following events or items:

- Invited the Council to the GPI Best Practices Dinner on February 16th and to the GPI Best Practices Panel on February 17th
- Nature and Neighborhoods capital grants are due February 14th
- Metro was awarded \$2.4 million in transportation safety grants

7. Councilor Communication

Councilors provided updates on the following meetings and

events:

- **Councilor Gonzalez** gave updates on several meetings, which included an OMPOC meeting, a Westside Multimodal Improvement Study Steering Committee meeting, and the Region 1 ACT meeting. He also mentioned that the “Say Hey!” event hosted by Partners in Diversity was happening later that night.
- **Councilor Lewis** attended the Confederated Tribes of Grand Ronde opening celebration for the Great Circle Recovery Center. She also gave an update on the Supportive Housing Services Tri-County body meeting.
- **Councilor Rosenthal** mentioned that he went with Councilor Lewis and Councilor Simpson to the Zoo Foundation meeting. He also attended a public meeting regarding the Kingston Terrance plan.
- **Councilor Simpson** gave an update on the urban flood safety and water quality district. The levy system on Marine Drive needs updates and encouraged councilors to support the project.

8. Adjourn

There being no further business, Council President Lynn Peterson adjourned the Metro Council Meeting at 11:53 a.m.

Respectfully submitted,



Jemeshia Taylor, Legislative Assistant

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 9, 2023

ITEM	DOCUMENT TYPE	DOC DATE	DOCUMENT DESCRIPTION	DOCUMENT No.
1.0	Powerpoint	02/09/2023	Budget Retreat Follow Up Presentation	020923c-01

**Ordinance No. 23-1492, For the Purpose of Amending Metro Code Chapter 7.05 to Improve
Clarity Regarding Penalties and Interest and Other Housekeeping Updates
and Declaring an Emergency**

Ordinances

Metro Council Meeting
Thursday, March 23rd, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 23-1492
CODE CHAPTER 7.05 TO IMPROVE CLARITY)	
REGARDING PENALTIES AND INTEREST)	Introduced by Chief Operating Officer
AND OTHER HOUSEKEEPING UPDATES AND)	Marissa Madrigal and Councilors Christine
DECLARING AN EMERGENCY)	Lewis, Juan Carlos González, Gerritt
)	Rosenthal, Duncan Hwang, and Ashton
)	Simpson in concurrence with Council
)	President Lynn Peterson
)	

WHEREAS, On February 25, 2020, Metro Council adopted Ordinance 20-1442, which among other things imposed a personal income tax of one percent beginning in tax year 2021 for high income earners (the “Personal Income Tax”); and

WHEREAS, before the taxes imposed by Ordinance 20-1442 could take effect, they required approval by Metro area voters; and

WHEREAS, on May 19, 2020, the Metro area voters approved the personal income tax; and

WHEREAS, the revenue derived from the Personal Income Tax imposed by Ordinance 20-1442 funds Metro’s Supportive Housing Services Program; and

WHEREAS, Metro Code Chapter 7.05 (“Income Tax Administration for Personal Income and Business Taxes”) administers Metro’s Supportive Housing Services business and personal income taxes; and

WHEREAS, Metro Code Chapter 7.05 imposes penalties and interest in certain tax situations, including, among others: a failure to file a tax return, late filing of a tax return, late payment of taxes owed, and underpayment of taxes owed; and

WHEREAS, via an Intergovernmental Agreement, the City of Portland’s Revenue Division acts as Metro’s “Administrator” for purposes of administering and enforcing Metro’s Personal Income Tax Law; and

WHEREAS, because neither Metro nor its Administrator can know in advance who will meet the income threshold for tax liability, Metro relied on media articles, outreach to accountants and employers, and web updates to inform people of the Supportive Housing Services personal income tax before the April 18, 2022, tax due date deadline; and

WHEREAS, while most Oregon accountants, tax attorneys, and employers were aware of the tax, Metro’s outreach proved to be insufficient notice for some taxpayers; and

WHEREAS, many taxpayers were unaware of the launch of the Supportive Housing Services personal income tax and felt it was therefore unfair to have penalties and interest assessed on delinquent tax filings; and

WHEREAS, penalties and interest should be waived for the first tax year (TY 2021) of the Metro personal income tax, and, further, penalties and interest should be waived for estimated taxes for tax year 2022 of the personal income tax; and

WHEREAS, housekeeping updates to the tax code are also necessary; and

WHEREAS, providing accurate tax information to affected taxpayers and ensuring that correct interest rates are in effect before delinquencies occur affects the welfare of Metro area taxpayers; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 7.05 is amended to waive penalties and interest for tax year 2021 and for estimated taxes for tax year 2022, as set forth in the attached as Exhibit A in tracked changes.
2. Metro Code Chapter 7.05 is amended to correct certain cross-reference errors and provide other housekeeping updates as set forth in the attached Exhibit A
3. That this ordinance being necessary for the immediate preservation of public health, safety and welfare to ensure consistent and uninterrupted collections and enforcement of Metro's Personal Income Tax Law, an emergency is declared to exist, and this ordinance takes effect immediately upon adoption, pursuant to Metro Charter Section 38(1).
4. If a court of competent jurisdiction finds that any portion of this ordinance is invalid or unenforceable as a matter of law, that finding does not invalidate or render unenforceable any other provisions of this ordinance.

ADOPTED by the Metro Council this 6th day of April 2023.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

New language for Chapter 7.05 is indicated by underlined text, and deleted language is indicated by strikethrough text.

CHAPTER 7.05

INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES

Section	Title
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 has the same meaning as "apportionable income" defined in Oregon Revised Statutes 314.610.

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. [Ord. 21-1465.]

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 taxfiler.

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 taxfiler attributable to work performed within the District;
- (b) Items reported to a nonresident taxfiler attributable to the taxfiler'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 taxfiler 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 taxfiler'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 has the same meaning as “nonapportionable income” defined in Oregon Revised Statutes 314.610.

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

Notice means a written document mailed by first class by the Administrator or District to the last known address of a taxfiler as provided to the Administrator or District in the latest registration form or tax return on file with the Administrator. Alternatively, notice may be delivered in person, by facsimile, email, or other means with taxfiler consent.

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. [Ord. 22-1485.]

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 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~~ adopt procedures, forms, and written policies ~~for~~ to administer 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 initial notice of determination to the taxfiler. Failure to file such a written notice within the time permitted is deemed a waiver of any objections, and the Administrator will dismiss the appeal. 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 a final determination. The Administrator's final determination must include the reasons for the determination and state the time and manner for appealing the final 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 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 ~~appeals board~~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. [Ord. 22-1485.]

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 the~~ 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 ~~penalties or~~ interest for failure to make quarterly estimated payments for tax year 2021 (tax year beginning on or after January 1, 2021) and tax year 2022 (tax year beginning on or after January 1, 2022). For tax years beginning on or after January 1, ~~2022~~2023, 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.
- (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. [Ord. 21-1465.]

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~~
 - 3.2. 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.
 - 4.3. 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.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

- (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.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

- (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 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) The Administrator may not waive or reduce any ~~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. The Administrator must consult with the Metro Chief Financial Officer before adopting a written policy that waives or reduces interest amounts. [Ord. 21-1465]

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. [Ord. 20-1454.]

IN CONSIDERATION OF

- ORDINANCE 23-1492, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.05 TO IMPROVE CLARITY REGARDING PENALTIES AND INTEREST AND OTHER HOUSEKEEPING UPDATES AND DECLARING AN EMERGENCY

Date: March 9, 2023
Department: Finance & Reg. Services
Meeting Date: March 23, 2023

Prepared by: Josh Harwood
Presented by: Josh Harwood
Shane Abma
Length: 20 minutes

ISSUE STATEMENT

Through the course of enforcement activities following the first year of Supportive Housing Services (SHS) tax collection, it became apparent that there were significant numbers of potential taxpayers that were unaware of the personal income tax. A similar outcome was experienced by Multnomah County in reference to its Preschool for All (PFA) tax. In response, both Metro and Multnomah County agreed to waive penalties and interest for personal income taxes for tax year 2021. Furthermore, no penalties or interest will be assessed for underpayment of estimated personal income taxes¹ for tax year 2022.

For FY 2021-22, over \$240 million was collected in personal and business taxes. In order to collect the taxes in the most efficient, cost-effective manner possible, Metro entered into an intergovernmental agreement with the City of Portland Revenue Division to administer the taxes. Meanwhile, the Division executed a data-sharing agreement with the Oregon Department of Revenue that would ease enforcement and compliance activities by identifying those taxpayers that filed state returns suggesting that they may owe SHS and/or PFA personal income taxes as well, but had not filed an SHS return by the due date.

Because the personal income tax is new and a significant number of taxpayers appear to have not been aware of the tax, staff is proposing code amendments to codify administrative actions already in place that eliminate personal income tax penalties and interest associated with tax years 2021 and 2022. In addition, staff proposes to eliminate the additional 20% penalty added for delinquent payments over four months, and, finally, make minor housekeeping revisions. Additionally, Metro staff will coordinate with the Portland Revenue Division to regularly update the interest rate charged on delinquent taxes to that which the state assesses – currently 6% versus Metro code, which has a statutory 10% interest rate but allows for adjustment by administrative rule.

ACTION REQUESTED

Staff requests that Metro Council adopt Ordinance No. 23-1492.

¹ Taxpayers that owe at least \$1,000 in SHS taxes must either have taxes withheld or make estimated payments. The process is similar to state and federal income taxes.

IDENTIFIED POLICY OUTCOMES

The proposed amendments to the Metro personal income tax code sections codify the administrative actions taken by the chief operating officer, chief finance officer, and the City of Portland to waive all penalties and interest for personal income taxes for tax year 2021 and for non-payment of estimated or withholding taxes for tax year 2022. The proposed code changes do four things related to the personal income tax code:

- 1) Waive all penalties and interest assessed for tax year 2021 (the first year the tax was in place);
- 2) Waive penalties and interest related to underpayments of taxes for tax year 2022. This eliminates charges that accrue due to underpayment of taxes either through inadequate withholdings or estimated payments;
- 3) Eliminate the additional 20% penalty that accrues after four months of delinquency (an initial 5% penalty is assessed for late filing/payment. This penalty is overly punitive for personal income taxes and, due to timing, will often be triggered because the data that is received from the State Department of Revenue that support enforcement actions can be delayed by more than four months; and,
- 4) Minor housekeeping amendments and revision related to plan and inclusive language.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt this ordinance. This codifies the administratively enacted relief to taxpayers that would otherwise be charged penalties and interest.
- Adopt this ordinance with revisions or modifications as described by Council.
- Reject this ordinance with other direction to staff. The existing income tax code would remain in place and proposed amendments would not be made.

STAFF RECOMMENDATIONS

Staff recommend that Metro Council adopt Ordinance No. 23-1492.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Tax collection began in April 2021, but the first tax filings were not due until April 2022. As of March 3, 2023, nearly \$400 million in total has been collected for Supportive Housing Services, with more than \$225 million of that coming from personal income taxes.

To date, roughly 20,000 non-filer letters have been sent by the Portland Revenue Division (Metro's tax administrator) to potential taxpayers. It is important to note that not all the notices will result in taxes owed. The information that triggered the letter to taxpayers only includes the income amount from the Oregon tax return, not the comprehensive federal and state tax information necessary to determine with certainty that someone is liable for the tax.

In response to taxpayer and Council concerns, Metro directed the City of Portland Revenue Division to waive penalties and interest for tax year 2021 and underpayment penalties and interest for estimated taxes for the 2022 tax year. Subsequently, staff have worked with the Portland Revenue Division and Multnomah County to implement the waivers and provide refunds for those that have already paid penalty and/or interest for tax year 2021.

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.

During the development of the tax code and intergovernmental agreement with the Portland Revenue Division, the Portland Revenue Division reached a data sharing agreement with State of Oregon Department of Revenue that enhances enforcement activities by identifying those taxpayers whose state tax return indicates they may also be liable for SHS personal income tax, but failed to file a SHS tax return. In fall 2022, the Revenue Division received the first data for tax year 2021. Subsequently approximately 20,000 potential taxpayers were identified and the process for notifying those taxpayers began.

After passage of the measure in May 2020, Metro and the City of Portland's Revenue Division made several efforts to educate impacted taxpayers. Staff also coordinated this work with Multnomah County because Multnomah County passed a similar personal income tax to fund early childhood education.

One challenge is that, of the nearly one million state income tax filers, only about 5% will be liable for the SHS personal income taxes in a given year. Furthermore, many taxpayers will have a one-time event that may make them liable for the tax only once. Similar to state and federal income taxes, but unlike property taxes, there is not a database of high-income earners to identify ahead of the tax due date. Below is a brief list of efforts made to reach both businesses and households prior to the tax due date.

Business Letters. In Winter 2021, a letter was sent to all registered businesses in the Metro jurisdiction. The letter detailed both the business and personal income taxes, as well as any employer responsibilities regarding employee payroll withholding. While we cannot mandate businesses outside of the Metro jurisdiction to withhold, opt-in forms are available for those employees to use with their employer. Staff is also looking at opportunities for additional outreach to local employers to expand income tax withholding compliance.

CPA/Tax Preparation Organizations. Metro and the Portland Revenue Division contacted the following organizations and who subsequently notified their membership:

- Oregon Society of CPAs
- Portland Business Alliance
- Prosper Portland
- Oregon Association of Minority Entrepreneurs
- Council on State Taxation
- Oregon State Bar
- Oregon Association of Tax Consultants
- Oregon Association of Independent Accountants

Software Vendors. The Portland Revenue Division is in regular contact with software providers and repeated requests have been made to have SHS forms included in tax software. Many software providers – particularly those with consumer products like Turbo Tax and H&R Block – will not upload forms for the first year of a tax because there can be significant changes once a tax is in place. While we do not expect significant changes, every effort is being made to encourage inclusion in the software packages. For tax preparers, this includes pending action to mandate efilings for those tax preparers completing at least ten returns. By instituting this mandate, software providers will be encouraged to include the forms in order to meet the needs of its clients.

Webinar/Conferences. Staff provided conference seminars and a webinar for interested parties.

Materials following this page were distributed at the meeting.



Metro

SHS Tax Code Amendments:

Penalty & Interest Waivers

March 23, 2023

Tax Year 2021

Tax Year 2021 (first year of tax, approx. \$240 million collected in FY 21-22)

- Prior to Due Date (i.e., April 18, 2022) - Cannot know who will owe tax until filings and/or enforcement actions*
- Fall 2022: Portland Revenue Division receives first Oregon Department of Revenue data for tax year 2021. Notifications of non-filers begins late Fall.*
- Universe of potential non-filers for both SHS and Mult. County's PFA taxes exceeded 20,000.*
- Early 2023: COO and CFO agree to administratively waive penalties and interest for tax year 2021 and for underpayments related to tax year 2022 (for taxes due April 18, 2023).*

Tax Year 2022

Waiving penalties and interest for underpayment of estimated taxes or insufficient withholdings

- Tax Year 2022 effectively becomes what tax year 2021 was supposed to look like for personal income taxpayers. Filing taxes by April 18, 2023, will not accrue any penalties or interest.*
- Taxpayers in subsequent years will still be required to make estimated payments or have withholdings if they owe more than \$1,000*

Ord. 23-1492 Amendments

- 1) Waive all penalties and interest assessed for tax year 2021 (the first year the tax was in place).
- 2) Waive penalties and interest related to underpayments of taxes for tax year 2022.
 - This eliminates charges that accrue due to underpayment of taxes either through inadequate withholdings or estimated payments;
- 3) Eliminate the additional 20% penalty that accrues after four months of delinquency (an initial 5% penalty is assessed for late filing/payment).
- 4) Minor housekeeping amendments and revisions.


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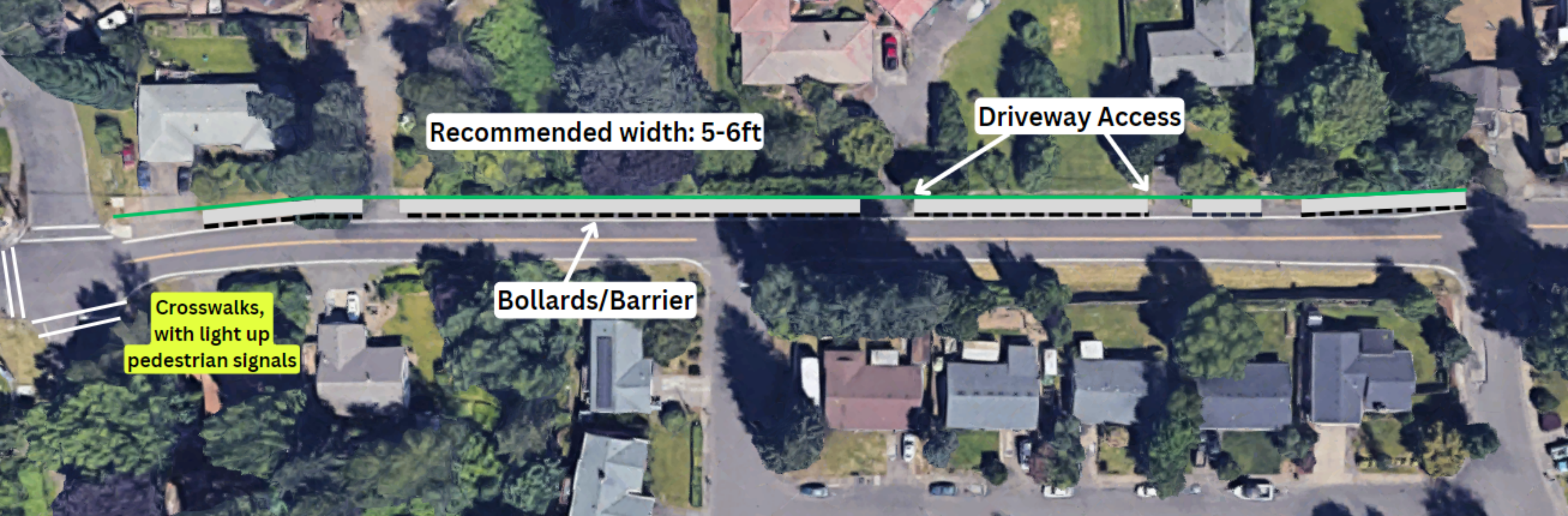


Name *	Avery Cobb
Email *	averyc2506@gmail.com
Address	<input type="checkbox"/> 2294 se 55th ave Hillsboro, Oregon 97123 United States

Your testimony

I am Avery Cobb, and I am a student at Hillsboro High School. I am proposing a project nearby my school, the addition of sidewalks along SE Rood Bridge Road leading towards Hilhi. Students deserve a safe walk to school and the narrow shoulders with foliage and garbage cans blocking the way for pedestrians is not up to standard. I have conducted a survey amongst people at my school and in my neighborhood, and 84.3% of respondents believe that it is unsafe to walk or bike there. I am well aware that such project would invoke on eminent domain, but I believe that Metro has the power and resources to follow through with this proposal. I am also aware that the rights of private property are important, but given the location of where these people reside, acquiring the land alongside the road to be repurposed for the safety of children is exponentially more important. Other ideas that were recommended by respondents were added streetlights, barriers, a stop sign, and more vegetation. I have attached a file where I have made a mock-up project plan I would hope to be considered! Thank you.

Attach a file	<div></div> <div>rood_bridge_rd_mockup2.png 1.03 MB • PNG</div>
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Recommended width: 5-6ft

Driveway Access

Bollards/Barrier

Crosswalks,
with light up
pedestrian signals