

IN CONSIDERATION OF

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

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

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Length: 20 minutes

ISSUE STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

ACTION REQUESTED

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

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

IDENTIFIED POLICY OUTCOMES

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

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

POLICY OPTIONS FOR COUNCIL TO CONSIDER

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

STAFF RECOMMENDATIONS

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

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

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

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

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

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

BACKGROUND

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

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

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

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

ATTACHMENTS

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