

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JON ISAACS,

Petitioner,

v.

JENNY MADKOUR,

Respondent.

Case No. 22CV11017

**ORDER GRANTING IN PART  
PETITION FOR DIFFERENT  
MEASURE TITLE AND  
EXPLANATORY STATEMENT**

**I. INTRODUCTION**

This Matter came before the Court for hearing on May 3, 2022, for decision on Petitioner’s Petition for Different Measure Ballot Title and Explanatory Statement (the “Petition”). Petitioner appeared through his attorney Steve Elzinga. Respondent Multnomah County Attorney Jenny Madkour appeared through her attorney Katherine Thomas. Intervenors Chief Petitioners for the ballot initiative appeared through their attorney Margaret Olney.

For the reasons set forth below, the Petition is GRANTED IN PART. The Court finds that the Ballot Title caption comports with applicable statutory requirements. As to the ballot title question and summary, the Court finds that they are in part insufficient, not concise, or unfair. As to the Explanatory Statement, the Court finds that it, in part, is not an impartial, simple and understandable statement. The Court therefore certifies to the Multnomah County Clerk a revised Ballot Title and Explanatory Statement (attached as Appendix A hereto) which includes a minimally revised ballot title question, summary, and explanatory statement, but is otherwise identical to that previously filed by Respondent.

## II. PROCEDURAL HISTORY

Intervenors are the chief petitioners of a Multnomah County Measure entitled “Eviction Representation for All” (the “Measure”). Intervenors filed the Measure with the Multnomah County Clerk on March 3, 2022. On March 17, 2022, Respondent filed the Ballot Title and explanatory statement (the “Ballot Title”) for the Measure with the Multnomah County Clerk.

Petitioner is a Multnomah County elector dissatisfied with the filed Ballot Title. Petitioner timely filed his Petition with this Court<sup>1</sup> pursuant to ORS 250.195(1), which requires a petitioner to “stat[e] the reasons the title filed with the court is insufficient, not concise or unfair.” Petitioner maintains that the filed Ballot Title’s caption, question, and summary are insufficient, not concise, and/or unfair in the ways discussed below. Petitioner also maintains that the filed explanatory statement required by Multnomah County Code Section 5.101(A)(2) fails to meet the statutory requirement that it be “impartial, simple and understandable.”

## III. OVERVIEW OF MEASURE

The Measure, if passed, would create a tenant legal resources program funded by a 0.75 percent adjustable capital gains tax. The legal resources program (“the program”) would provide free lawyers to tenants and other holdovers, such as post-foreclosure holdovers, sued for possession of a residential premises in eviction proceedings, as well as provide representation in a number of other housing-related matters. The program would also provide discretionary grants of financial assistance to individuals with unfavorable outcomes in landlord tenant court to pay costs or attorney’s fees assessed against them as part of a judgment. Additionally, the Measure provides for the discretionary award of emergency rental assistance.

---

<sup>1</sup> The Court issued an order on April 18, 2022, allowing relation back of the filing of the Petition to March 28, 2022, which was the statutory filing deadline.

The Measure imposes certain obligations on landlords who serve tenants with eviction notices requiring that landlords notify tenants of the free legal resources available to them. The Measure also requires courts to set over the first appearance of any covered proceeding (including eviction and post-foreclosure removal proceedings) for at least seven days if an individual has not been notified of the opportunity to obtain free legal counsel and does not waive their right to counsel.

#### **IV. DISCUSSION AND ANALYSIS**

The law requires generally that a measure of this nature clearly and accurately describe what is to be taxed, the rate of tax imposed, and what will be funded with the tax revenue. Petitioner's objections to the Ballot Title challenge the sufficiency and transparency of the Measure's description of what is to be taxed, the tax rate at issue, as well as the contours of the tenant legal resources program—in summary, this is a challenge to the adequacy of the Measure's ability to communicate to the voter clearly and accurately what will be taxed, what the proposed tax rate is, and what the tax will fund.

##### **A. Legal Standards for a Local Ballot Title and for a Challenge Thereto**

In considering whether to grant or deny Petitioner's proposed changes to the Measure, the Court must enforce the legal requirements of a ballot title as decided by the Legislature. ORS 250.035 states that a ballot title for a local measure must contain three separate sections: (1) "A caption of not more than 10 words which reasonably identifies the subject of the measure"; (2) "A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure"; and (3) "A concise and impartial statement of not more than 175 words summarizing the measure and its major effect." ORS 250.035(1).

ORS 250.195(1) states that upon receipt of a petition from a dissatisfied elector challenging a ballot title, the circuit court “shall review the title and measure to be initiated \* \* \*, hear arguments, if any, and certify to the county clerk a title for the measure which meets the requirements of ORS 250.035.”

B. Consideration of Petitioner’s Claims That the Ballot Title is Legally Deficient

Petitioner challenges each section of the Ballot Title. Most of Petitioner’s challenges are made and renewed as to each discrete section of the Ballot Title. Some of Petitioner’s challenges, however, relate to only one section of the Ballot Title.

**1. The filed ballot title caption is sufficient, concise, and fair.**

ORS 250.035(1)(a) requires that the ballot title under review include a “caption of not more than 10 words which reasonably identifies the subject of the measure.”

ORS 250.035(1)(a).

The filed ballot title caption reads: “Establishes residential tenant resources program, eviction representation, capital gains tax.”

Petitioner argues that the Ballot Title caption is insufficient, not concise, and unfair because: (1) it creates a misleading impression that the eviction representation could extend to commercial evictions; (2) the term “resources program” is vague and duplicative; (3) the question does not capture the breadth of the legal representation the resources program would provide, specifically in its failure to explain that post-foreclosure holdovers and squatters can access services; and, (4) the term capital gains tax is so misleading it must be put in quotes.

While the Court finds some of Petitioner’s concerns more persuasive as to subsequent sections of the Ballot Title, the caption as written by Respondents is legally sufficient because it reasonably identifies the subject of the Measure.

a. Commercial Eviction Representation Not Implied by Caption

The Court finds that the caption does not create an ambiguity nor an impression that commercial tenants might be eligible for the services of the described program. As the caption is drafted, “eviction representation,” is a facet of, or associated service, of the “residential tenant resources program.” The use of the word “residential” in the description of the program provides context also for “eviction representation.” As such, the Court finds no ambiguity.

b. “Resources Program” Not Vague or Duplicative

The term “resources program” can be understood plainly as a program that provides resources. “Resources” and “program” are differently defined as words with no definitional overlap.<sup>2</sup> As such, they cannot be duplicative of one another. And as there are no other words in the caption that cover the same concepts, they are likewise not duplicative of any other set of terms in the caption. Both the terms “tenant” and “eviction representation” provide context as to who the program serves and what the program provides. Accordingly, the terms are not vague. As no more concise terms are available to capture the meaning of “resource program,” they are also concise.

c. “Resources Program” is Adequately Described

All captions that comply with the provisions of ORS 250.035(1) are limited to a total of 10 words. The subject of the Measure must also be “reasonably identified” to comply with the caption requirements. Given the forced economy of the word limit, no subject can be described in detail. The word limit cannot accommodate a description of all the types of resources the

---

<sup>2</sup> “Resource” is defined, in relevant part as “a source of supply or support; an available means.” *Resource*, Merriam-Webster (May 22, 2022), <https://www.merriam-webster.com/dictionary/resource>. “Program” is defined, in relevant part as “a plan or system under which action may be taken toward a goal.” *Program*, Merriam-Webster (May 22, 2022), <https://www.merriam-webster.com/dictionary/program>.

program provides and the different legal statuses of the individuals who might be eligible for those programs. The primary purpose of the Measure is, in fact, the creation of a resources program for tenants providing eviction representation—all of which is captured by the caption as written. The Court therefore finds that the resources program is adequately described within the confines of the caption requirements and the subject of the measure is reasonably identified.

d. Capital Gains Tax Does Not Need Quotes

The subject of the measure involves a capital gains tax. For purposes of the caption requirements, the tax type has been reasonably identified and is not misleading. Petitioner’s challenge to the appropriateness of the description of the capital gains tax will be discussed in more detail in the challenges to the summary section of the Ballot Title.

**2. The Ballot Title question is, in part, insufficient, not concise, and unfair.**

ORS 250.035(1)(b) requires that a ballot title include a “question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure.” ORS 250.035(1)(b).

The filed ballot title question reads: “Should County create residential tenant resources program, including free eviction-related legal representation, funded by 0.75 percent capital gains tax?”

Petitioner maintains that the Ballot Title question is insufficient, not concise, and unfair because it fails to “plainly phrase the chief purpose of the measure.” Petitioner challenges the question as to the following particulars: (1) the description of the tax as a 0.75 percent tax is misleading; (2) the description of the tax as a capital gains tax is misleading; (3) the question creates a misleading impression that the eviction representation could extend to commercial evictions; (4) the term “resources program” is vague and duplicative; (5) the question does not

capture the breadth of the legal representation the resources program would provide, specifically by failing to explain that post-foreclosure holdovers and squatters can access services; (6) the question does not capture that the tenant services program will make discretionary financial awards to pay costs and fees adjudged to any clients of the program who lose their eviction cases, as well as offer discretionary rental payment assistance; and (7) the question omits the significant impact of the Measure in that it fails to capture potential eviction delays.

a. The Description of the Tax as 0.75 Percent Tax is Misleading

Petitioners challenge the description of the tax rate in the question as misleading because, as drafted, it communicates that the tax is a fixed rate tax. Petitioners urge the Court to adopt a description of the tax as a variable tax because passage of the Measure allows the County to adjust the tax rate up or down based on budget information provided in a mandatory report on the finances of the program. Intervenors, in contrast, argue any description of the tax as other than a 0.75 percent tax would be misleading because it is speculative to assume the rate will be adjusted up or down in the future.

A chief purpose of the Measure is the implementation of a tax, so it is important the Ballot Title clearly communicate the rate of the tax to the voter. A description of the rate as a fixed rate, as the proposed Ballot Title question contains, is misleading because the rate can, by the terms of the Measure, be adjusted by the County as frequently as every year. Petitioner proposes stating that the rate is a “variable” rate; however, this is not an entirely apt description because it implies the rate will change.<sup>3</sup>

///

---

<sup>3</sup> For example, a variable interest rate is an interest rate that changes over time, typically in relation to an underlying benchmark, such as the prime rate.

The Court finds the description of the tax rate as “adjustable” is accurate. The Measure itself uses the verb “adjust” to describe changes to the rate, “[t]he initial rate for this tax shall be 0.75%. The rate for this tax may be *adjusted* by Multnomah County as necessary to ensure compliance with the program objectives as set forth in the ordinance.” Measure §3A (emphasis added). Here, a “yes” vote approves the initial tax rate and gives voters notice that the County may increase the tax rate under specific circumstances. Describing this as an adjustable 0.75 percent tax alerts the voter that the tax is not necessarily a fixed rate for the life of the tax.

b. The Description of the Tax as a Capital Gains Tax is Not Misleading

Petitioner again argues that the use of the term *capital gains tax* is so misleading that it should be placed in quotes to alert the voter that there is something unusual about the use of the term in the Ballot Title. A chief purpose of the measure is, in fact, the imposition of a tax on capital gains, so that an affirmative response to the question does correspond to an affirmative vote on the measure. For purposes of the question, the use of the description of a *capital gains tax* is sufficiently clear and plainly states a chief purpose of the measure.

c. Commercial Eviction Representation Not Implied by Question

The Court finds that the question does not create an ambiguity nor an impression that commercial tenants might be eligible for the services of the described program. As the question is drafted, “free eviction-related legal representation,” is very clearly a service of the “residential tenant resources program” because it follows a comma. The use of the word “residential” in the description of the program provides unambiguous context for “eviction representation.” Even though the question will be modified by the Court in response to other arguments made by Petitioner, the modified question likewise does not create an ambiguity as to commercial evictions.



d. “Resources Program” is Adequately Described

For the same reasons as stated above with regard to the sufficiency of the term “resources program” as used in the caption, the term is adequately described in the question and is not vague, duplicative, or misleading.

e. Legal Services Description Must Be Broadened

Petitioner challenges the proposed question for failing to identify the breadth of legal services that will be provided by the Measure’s tenant resources program. The only specific legal service identified in the proposed question is eviction representation. Petitioner argues that the description of that particular service is deficient because it creates the impression that it is available to individuals who, at one point, had a legal right to occupy a premises as a tenant. Petitioner argues that this is misleading because it does not imply that the same eviction defense would be available through the program to post-foreclosure holdovers and other occupiers of a premises who never had a legal right or agreement to control a premises. (Petitioner refers to these individuals as “squatters.”) Petitioner also challenges the question for failing to capture the legal services other than eviction defense that will be provided to those who access the program—for example, appeals related to public housing or the denial of Section 8 vouchers.

Petitioner’s challenge is well-placed. With double the word limit as the caption, the question allows for more detail about what sort of a program the voters are being asked to fund or reject. The Court’s re-written question better captures the breadth of the program by eliminating the term “eviction-related” and stating instead that the program provides “free lawyers.” The Court’s phrasing eliminates the inaccurate specificity contained in the question

drafted by Respondents, which suggests that the legal representation provided by the program extends only to eviction proceedings.

f. Program Payments for Rent and Judgment Satisfaction Must be Captured in the Question

Paying a tenant's rent or a landlord's attorney's fees is a very different use of program funds than providing no cost legal assistance and should be captured, to the extent the Ballot Title word limits allow, in the description of the services provided by the program. Failure to communicate this function of the program is unfair to the voter. For this reason, the Court modifies the question to include "providing . . . financial assistance" as part of the program description.

g. Eviction Delays Is Not a Chief Purpose of the Measure

Petitioner challenges the proposed question for failing to address potential eviction delays. While implementation of the Measure may cause some delays in landlord tenant cases, and therefore delay some evictions, the Court finds that delaying evictions is not a chief purpose of this Measure. Accordingly, ORS 250.035(1) does not require that eviction delays be addressed in the question.

The Court finds that the following version of the question provides needed information to voters, and is otherwise sufficient, concise, and fair: Should County create residential tenant resources program providing free lawyers, financial assistance, funded by adjustable 0.75 percent capital gains tax?

The above version is included in the revised Ballot Title and explanatory statement certified by this Order, which is attached as Appendix A.

**3. The ballot title summary is, in part, insufficient, not concise, and unfair.**

ORS 250.035(1) requires that the ballot title include a "a concise and impartial statement of not more than 175 words summarizing the measure and its major effect." ORS 250.035(1)(c).

Petitioner claims the Ballot Title summary is insufficient, not concise, and unfair. Petitioner argues specifically that the summary has the following defects: (1) the description of the tax as a capital gains tax is misleading; (2) the summary does not capture the breadth of the legal representation the resources program would provide, specifically by failing to explain that post-foreclosure holdovers and squatters can access services and also that legal services will be provided outside of the context of landlord-tenant court; (3) the summary is misleading when it states the program will be operational within 12 months of passage; (4) the summary fails to disclose that the Measure dictates changes to state trial court procedure; (5) the summary fails to disclose that the Measure will create significant eviction delays; (6) the summary fails to disclose the requirements for landlords to comply with a county-maintained rental registry; (7) the summary uses the term “culturally specific and responsive services” in a misleading way; (8) the summary is misleading because it says the tax rate “may” be increased or decreased, but the Measure says “shall” be increased or decreased; and (9) the summary fails to disclose that the employees or contractors working for the program must be paid a competitive salary and benefits.

a. Description of Capital Gains Tax is not Insufficient or Misleading

The analysis set forth with regard to the same challenge against the question is adopted here. Petitioner argues the incorporation of the IRS definition of what is taxable as a capital gain is misleading because the proposed Multnomah County tax will not be taxed at the same rate, or with the same rules, as the federal capital gains tax. The Court finds that the summary does not create the impression that the proposed tax will be identical in its application to the federal capital gains tax simply by using a federal definition of what is a capital gain. The Court will not amend the summary as written with respect to the term *capital gains tax*.

b. Description of Scope of Eviction Representation is Misleading

The analysis set forth with regard to the same challenge against the question is adopted here. The summary is therefore revised to capture the breadth of the legal services that will be provided by the program.

c. Description of the Program as Operational in Twelve Months is Misleading

Petitioner argues that the description of the tenant resources program as operational within 12 months of the Measure's passage is misleading because the program will have no access to tax revenue for operational costs at the one-year mark. Petitioner cross-references different sections of the Measure in support of this argument.

The Measure states that the program will be operational one year after passage (one year after the November 2022 election) and the tax will be imposed beginning January 1, 2023. Any tax revenue for tax year 2023 would not be available until after the first quarter of 2024. On this math, Petitioner argues the Measure would create a program that would be functionally unfunded between November 2023 and mid-2024 when 2023 tax revenue becomes available. Therefore, Petitioner concludes, the program could not be operational until at least mid-2024. The Measure, however, contemplates potential non-tax sources of funding for the program, including "temporary funds from another government body." Measure §4E. That said, the only non-speculative source of funding for the tenant resources program is the capital gains tax that is the subject of the Measure.

Respondent's and Intervenors' response to this challenge is that the statement could be true because the Ballot Title may not be filed until the May 2023 election. The Court finds this response unsatisfactory. The Petition was submitted in advance of the November 2022 election and the Measure says that the proposed tax would be in effect starting on January 1, 2023. In

determining the sufficiency of the Ballot Title, the November 2022 election must be the Court’s reference point in its analysis. For this reason, “Program Operational within 12 months of passage,” is removed from the summary as misleading.

d. Failure to Capture Changes to State Court Trial Procedure is Unfair

The Measure contains a provision ensuring a minimum seven-day continuance for *pro se* defendants in landlord-tenant court who were not notified of the program to allow them time to obtain free representation through the tenant resources program. In isolation, this provision is not a major effect of the Measure. When read together with other provisions of the Measure, however, it is a major effect—even if not an intended effect.

The Measure is drafted for the November 2022 election and contemplates the first tax year as beginning January 1, 2023. If the program is in effect by ordinance in November 2023, the requirement that eviction cases be postponed until the appointment of counsel is problematic. As discussed above, the program’s only identified funding source for hiring eviction defense lawyers by contract will not be available for five to six months after the inception of the program and the eviction case setover requirement is in effect. The Measure requires courts to set over first appearances “for *no less* than seven days to provide time for the covered individual to seek legal representation.” Measure §7C (emphasis added). The Measure’s open-ended timeline for these set overs suggests that it requires the landlord-tenant court to set over cases until a defendant-tenant is *actually able* to obtain a free lawyer through the program, not just give them a few extra days to *attempt* to do so.

Therefore, practically speaking, the effect of the Measure’s setover provision, combined with an unfunded program, seems likely to delay a significant number of eviction cases for a period of months until tax revenue is available to fund the program. In order to capture this

effect, the summary will be revised to state, “Eviction cases postponed until lawyer can be appointed.”

e. Failure to State Passage of the Measure Will Create Significant Eviction Delays is not Misleading

While the Measure’s setover provision appears likely to delay a significant number of eviction cases, the Court is not in a position on this record to know how many cases could be delayed and for what period of time. Petitioner argues the effect of this Measure is something akin to a *de facto* eviction moratorium until the tenant resources program receives tax funds from the 2023 tax year sometime in mid-2024 and has the ability to fund free legal representation for tenants and other individuals covered by the Measure. If the Court were to draw that conclusion, the Court would be engaging in speculation.

For this reason, no part of the Ballot Title need state that this Measure will delay evictions. The Court finds that explaining that eviction cases will be delayed until the appointment of a lawyer (as discussed in the preceding section) is factually correct and sufficient to communicate that there could be delays in eviction proceedings.

f. Use of the Term “culturally specific and responsive services” is not Misleading

Petitioner argues that the summary uses the term “culturally specific and responsive services” in a misleading way because: (1) the Measure defines that term to “mean something beyond what the phrase would otherwise ordinarily mean” and does not disclose this alternative meaning; and (2) the term is “emotionally charged” and “tends more to promote the Measure’s passage than to describe its substance accurately.” Beyond stating these two bases for his objection, Petitioner does not provide any evidence or argument in support of his contention that the term is misleading, and the Court can find none. Accordingly, the use of the term “culturally

specific and responsive” is not misleading and will remain in the summary as drafted.

g. Statement that Tax Rate “May” be Increased is not Misleading

Petitioner argues that the summary is misleading because it states that the County “may” increase or decrease the tax rate, but that the Measure uses the term “shall” in reference to the County’s responsibility to adjust the tax rate. The Measure, however, uses both “may” and “shall.” In Section 3A, the Measure states: “The rate for this tax *may* be adjusted by Multnomah County as necessary to ensure compliance with the program objectives . . . .” Measure §3A (emphasis added). In Section 5E, the Measure states: “The county *shall* increase or decrease the capital gains tax rate based on [budgeting] reports to ensure projected funding is adequate for proper functioning of the program.” Measure §5E (emphasis added).

Petitioner’s argument fails to persuade. In Section 5E, the Measure’s use of “shall” is not imperative; rather, it is conditional. The Measure does not place an absolute requirement on the County to “increase or decrease the . . . tax rate” every year, but rather requires that the County adjust the tax “to ensure projected funding is adequate for proper functioning of the program.” Based on the plain text of the Measure, the County is required to increase or decrease the tax rate *only if* the program’s projected funding needs are anticipated to change in the next year. If current funding levels are projected to be sufficient however, the Measure would not require the County to adjust the level of the tax. Accordingly, the summary’s use of the term “may” in reference to the County’s ability to adjust the tax rate is factually correct and not misleading.

h. Failure to Disclose Competitive Salary Requirement is not Insufficient

Petitioner argues that the summary fails to disclose that the employees or contractors working for the program must be paid a competitive salary and benefits. The Court finds that this is not a major effect of the Measure and therefore does not need to be included in the

Ballot Title summary.

i. Additional Changes

The Court will make the following additional changes to the summary:

1. The Court will remove the word “removal” from the summary as it has no meaning in landlord-tenant proceedings and therefore may confuse voters.
2. The Court will omit the sentence “Designated fund must maintain 18 months of reserve funds” as it is not a major effect of the Measure.

The Court’s amended version of the summary is included in the revised Ballot Title and explanatory statement certified by this Order, which is attached as Appendix A.

**4. The explanatory statement is not impartial, simple, and understandable.**

Multnomah County Code § 5.101(A)(1) requires that in addition to drafting a ballot title that conforms with the requirements of state law, the Multnomah County attorney must also prepare an explanatory statement for a filed measure. That statement “must consist of an impartial, simple and understandable statement explaining the measure and its effect.”

MCC 5.101(A)(2).

Petitioner argues that the explanatory statement fails to comply with the Multnomah County Code because of the arguments he raised as the Ballot Title caption, question, and summary. Petitioner raises no new challenges to the explanatory statement specifically.

For the reasons already stated in this opinion, the Court makes the following changes to the explanatory statement:

- The sentence “Program to be fully operational within 12 months of passage of the measure” will be deleted.
- The sentence “Eviction cases postponed until lawyer can be appointed” will be added.



- The term “removal” will be omitted.
- The statement will be amended to include “post-foreclosure removal” and “appeals to maintain public housing assistance payments” in the list of covered proceedings.
- word “adjustable” will be added before the statement of the tax rate.
- The sentence “Businesses are not subject to the tax” will be added.

Aside from the foregoing changes, the Court finds that the explanatory statement as written by Respondents is otherwise impartial, simple, and understandable and that it adequately explains the Measure and its effect. The Court’s amended version of the explanatory statement is included in the revised Ballot Title and explanatory statement certified by this Order, which is attached as Appendix A.

#### V. CONCLUSION

For the reasons stated above, the Petition is GRANTED IN PART. Pursuant to ORS 255.155(1), the Court has revised the Ballot Title to bring it into compliance with applicable law, and hereby certifies to the county clerk the revised Ballot Title and Explanatory Statement, attached as Appendix A to this Opinion and Order.

Petitioner will submit an appropriate form of judgment consistent with this Opinion and Order.

**IT IS SO ORDERED.**

DATED: May <sup>24<sup>th</sup></sup> 21, 2022.

  
Katharine von Ter Stegge  
Circuit Court Judge

Original: Court File  
cc: Steve Elzinga, Counsel for Petitioner  
Katherine Thomas, Counsel for Respondent Multnomah County Attorney Jenny Madkour  
Margaret Olney, Counsel for Intervenors Chief Petitioners

## APPENDIX A

### **MultCoInit-09 Ballot Title and Explanatory Statement**

**Caption:** Establishes residential tenant resources program, eviction representation, capital gains tax.

**Question:** Should County create residential tenant resources program providing free lawyers, financial assistance, funded by adjustable 0.75 percent capital gains tax?

**Summary:** Establishes program by ordinance to provide free, culturally specific and responsive legal representation, with translation, to persons sued in Multnomah County residential eviction proceedings (including post foreclosure) as well as related housing claims and appeals, including to maintain public housing assistance. Eviction cases postponed until lawyer can be appointed. Program administered by new Tenant Resource Office. County to contract with at least five nonprofit law firms or community-based organizations to provide services. County to administer, establish rules for discretionary award of funds for emergency rental assistance and payment of legal costs or money awards awarded to property owners. County, designated organizations to prepare annual program reports, provide education about services. County to create registry of residential rental properties. Residential property owners must inform individuals about program when serving notice of termination. Establishes new, adjustable 0.75 percent tax on net capital gains (as defined by Internal Revenue Code) of County residents, effective 2023, to fund program. Supplemental funding from recovered attorney fees, costs. Tax rate may be increased or decreased based on annual reports.

**Explanatory Statement:** This measure creates a Multnomah County ordinance establishing a new program to provide free, culturally specific and responsive legal representation, including translation services, to persons facing eviction in Multnomah County residential eviction proceedings (including post-foreclosure), and related claims, including appeals to maintain public housing assistance payments. Any natural person, regardless of immigration status, facing eviction from a residential property can seek services immediately after receiving notice of termination or immediately after having reasonable belief that notice of termination has been served. Residential property includes any building, structure, land, rented space, or transportable dwelling unit, or part thereof, used for a residence.

The program would be administered and managed by a new Tenant Resource Office within the Department of County Human Services. The County would be required to contract with at least five nonprofit law firms or community-based organizations to provide legal representation, including seeking to recover attorney fees, costs, and prevailing party fees when applicable; educate the public about eviction services and related programs; and report annually on predetermined performance metrics. Designated organizations must employ staff attorneys or contract with attorneys to provide representation and must provide competitive salaries and benefit levels.

The County must administer and establish rules for the discretionary award of program funds for emergency rental assistance and payment of legal costs or money awards awarded to residential

property owners or landlords if a represented person does not prevail in a claim. County rules for distribution of those program funds must account for measure's policy objectives, budgetary considerations, fairness, and whether the funds would resolve the legal dispute. County to provide education about eviction services and related programs; maintain a countywide registry of residential rental properties; and prepare annual reports on a variety of metrics. Residential property owners are required to provide written notification about the legal representation program when serving an individual with notice of termination, and failure to do so would require setover of a first court appearance for at least 7 days to allow individual time to seek legal representation. Eviction cases postponed until lawyer can be appointed.

The measure establishes a new, adjustable 0.75 percent tax on net capital gains (as defined by the Internal Revenue Code) of County residents to fund the program, imposed for tax years beginning on or after January 1, 2023. Businesses are not subject to the tax. The tax rate may be increased or decreased based on the County's annual reports. Net revenues, after deducting the costs of collection and enforcement, to be deposited into a separate program fund. If a designated organization is awarded attorney fees or costs, or if the County receives temporary funds from another government for eviction representation, those monies also would be added to the program fund. The fund must accrue and maintain reserve funds adequate to ensure 18 months of continued program operation. The tax will be received, collected, and enforced by the County Chief Financial Officer, or a public agency, who also will adopt administrative rules to implement the tax.