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

PETER ZUCKERMAN,

Petitioner,

v.

THE METRO COUNCIL, as the Governing
Body of the Portland Area Metropolitan
Service District,

Respondent.

Case No. _____

PETITION FOR REVIEW OF
EXPLANATORY STATEMENT

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

Filing Fee Pursuant to ORS 21.135

NATURE OF ACTION

1.

This is a petition for review of the explanatory statement prepared on the behalf of the Metro Council as the governing body of the Portland area metropolitan service district (“Metro”) for a Metro prospective initiative petition entitled The Local College Affordability Measure (the “Initiative”). The Initiative is a proposed Metro initiative which would create a business payroll tax to fund Portland State University (“PSU”) scholarships, instructors and advisors. The payroll tax would be paid by employers. The rate of the tax is one-tenth of one percent of the wages paid by an employer for services performed within the Metro boundary. This petition for review is brought pursuant to Section 9.02.045 of the Metro Code.

{SSBLS Main Documents/8710/001/00566679-1 }

1 **PARTIES**

2 2.

3 Petitioner Peter Zuckerman (“Petitioner”) is an Oregon elector who is registered to vote
4 in Multnomah County and who resides within Metro. He is one of the co-Chief Petitioners of the
5 Initiative. Petitioner is dissatisfied with the ballot title.

6 3.

7 Respondent the Metro Council (“Respondent”) is the governing body for Metro.
8 Respondent’s general counsel prepared the ballot title for Respondent.

9 **FACTS**

10 4.

11 On January 29, 2016, Chief Petitioners Tom Bull, Laura Aguon and Peter Zuckerman
12 filed the Initiative with the Multnomah County Elections Division. A true and correct copy of
13 the Initiative, as published on the website maintained by the Multnomah County Elections
14 Division, is attached hereto as Exhibit A.

15 5.

16 On February 12, 2016, Respondent’s general counsel delivered an explanatory statement
17 for the Initiative to the Director of Elections for Multnomah County. A true and correct copy of
18 the explanatory statement, as published on the website maintained by the Multnomah County
19 Elections Division, is attached hereto as Exhibit B.

20 6.

21 This petition for review is filed within seven business days after the ballot title for the
22 Initiative was filed with the Director of Elections and, accordingly, is timely pursuant to Section
23 9.02.045(c) of the Metro Code.

1 7.

2 The Explanatory Statement prepared on the behalf of Respondent for the Initiative does
3 not comply with the requirements Section 9.02.045(a) of the Metro Code, because the
4 Explanatory Statement does not contain an impartial, simple and understandable statement
5 explaining the measure and its effects. For example, the Explanatory Statement:

- 6 • States that the Initiative “assigns responsibility to administer the tax to Metro” and that,
7 under the Initiative “Metro is required to collect the tax * * *.” Both statements are
inaccurate and potentially misleading;
- 8 • Uses the imprecise and inaccurate phrases “region-wide” and “metropolitan region” to
9 describe the Metro district;
- 10 • Creates the erroneous impression that the tax would be paid by employees;
- 11 • States that PSU may use funds from the tax for “[c]osts incurred by Metro and the
12 Department of Revenue to collect and distribute the tax,” when the Initiative does not so
provide;
- 13 • States that PSU may use funds from the tax for “[b]i-annual audits by the Metro
Auditor,” when the Initiative does not so provide;
- 14 • States that the Metro Council may reauthorize the payroll tax created by the Initiative,
15 when the Initiative does not so provide.

16 8.

17 For the reasons stated in paragraph 7, the Explanatory Statement does not comply with
18 the requirements of Section 9.02.045(a) of the Metro Code.

19 9.

20 Pursuant to section 9.02.045(c) of the Metro Code, not later than 5:00 p.m. on Thursday,
21 February 25, Petitioner will provide written notice to the Director of the Multnomah County
22 Division of Elections and the Chief Operating Office of Metro that this petition has been filed.
23
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for a judgment certifying to Respondent and the Director
3 of Elections for the Multnomah County Elections Division an Explanatory Statement that
4 complies with the requirements of Section 9.02.045 of the Metro Code.

5 DATED this 24th day of February, 2016.

6 STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

7
8 By: /s/ Steven C. Berman

Steven C. Berman, OSB No. 951769

9 209 SW Oak Street, Suite 500

10 Portland, OR 97204

11 Telephone: (503) 227-1600

12 Facsimile: (503) 227-6840

13 Email: sberman@stollberne.com

14 Attorneys for Petitioner

15 Trial Attorney: Steven C. Berman, OSB No. 951769

Prospective Petition

Local Initiative and Referendum

SEL 370
 rev 01/16 ORS 250.045,
 250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information		Type	
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative
			<input type="checkbox"/> Referendum
Jurisdiction		Some Circulators may be Paid	
<input type="checkbox"/> County	<input type="checkbox"/> City	<input checked="" type="checkbox"/> District	<input checked="" type="checkbox"/> Yes
			<input type="checkbox"/> No

Title Subject or name you give your petition.
 The Local College Affordability Measure

Website if applicable

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient Email Chief Petitioners Mail Chief Petitioners

Recipient Information

Name Peter Zuckerman **Email Address** pzuckerman@gmail.com

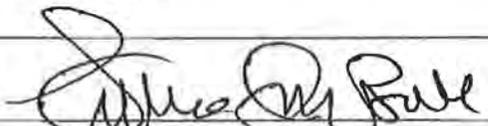
Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name Tom Bull **Contact Phone** 773-620-2669

Residence Address street, city, state, zip
 2407 NW Johnson Street, PORTLAND OR 97210

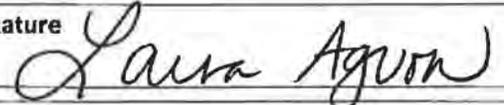
Mailing Address if different **Email Address** tombull225@gmail.com

Signature  **Date Signed** Jan 29, 2016

Name Laura Aguon **Contact Phone** 971-322-9737

Residence Address street, city, state, zip
 1705 SW 11th Ave Apt 606

Mailing Address if different **Email Address** aguon.laura@gmail.com

Signature  **Date Signed** 1/29/16

Name Peter Zuckerman **Contact Phone** 310 507 4689

Residence Address street, city, state, zip
 5514 NE 31st Ave, Portland, OR 97211

Mailing Address if different **Email Address** pzuckerman@gmail.com

Signature  **Date Signed** Jan. 29, 2016

RECEIVED
 16 JAN 29 PM 2:34
 TASCOTT
 DIRECTOR OF ELECTIONS

WHEREAS, Portland State University is the Metro region's only locally headquartered, comprehensive public university. Seventy-nine percent of in-state Portland State University students are from our tri-county region. These students range from community college transfer students to working parents, veterans, first-generation college students, laid-off workers, and more.

WHEREAS, college affordability within the Metro region is a matter of critical public concern. Although most Portland State University students work while in school, approximately 30% to 40% percent drop out before graduating, largely because they cannot afford to pay. Those who graduate are often in deep debt.

WHEREAS, our community needs Portland State University to attract and retain high-quality college teachers and professors; prepare returning veterans for good-paying jobs; provide career training in growing fields like healthcare and technology; and ensure college students complete their degrees in a timely manner.

WHEREAS, 60% of all Portland State University graduates remain in the local area, and local businesses benefit greatly from a local, educated workforce.

WHEREAS, students who get good grades and work hard should not be turned away from college because of a lack of funds. The state has failed for years to solve this problem, has no plan to address it, and the problem is only getting worse.

WHEREAS, it is the intent of this measure to provide resources above and beyond those provided by the Legislature, and the revenue from this measure should not be counted against or used to supplant any state monies. If the state appropriation to Portland State University is reduced or otherwise offset due to this measure, the local Portland State University regional payroll tax will be suspended, resulting in the loss of scholarships, student support, and faculty positions.

THE VOTERS OF METRO, THROUGH THEIR INITIATIVE POWER, HEREBY ESTABLISH:

THE LOCAL COLLEGE AFFORDABILITY MEASURE:

- To make college more affordable, specifically for Metro-area students, by granting thousands of scholarships to qualified students who need them. These scholarships will ensure that students have a better chance of starting and finishing college at Portland State University.
- To better support students in completing college, by adding student advisors, tutors, and counselors. These advisors, tutors, and counselors will ensure more students stay in college, complete their degrees, graduate in a timely matter, and succeed.
- To attract and retain more part-time and full-time college teachers and professors.

This Initiative creates a payroll tax on businesses limited to 1/10th of 1% (0.1%). The tax will be paid by businesses, not by workers, and will expire in eight years unless renewed.

NOW THEREFORE, BE IT RESOLVED that:

THE PEOPLE OF METRO ORDAIN AS FOLLOWS:

Section 1. Declaration that Funding for Portland State University is Matter of Public Concern. Funding for Portland State University is a matter of metropolitan concern over which Metro exercises jurisdiction.

Section 2. Use of Revenues Restricted to Portland State University Related Purposes. The revenues received from the Payroll Tax created by this Ordinance may only be used as follows:

- A. At least 50% of the revenues annually shall be used by Portland State University to establish and maintain a fund to provide scholarships to students from the Metro District with demonstrated financial need, in order to better enable such students to obtain their university education in an affordable and timely manner.

To be eligible for a scholarship from this fund, a student must be an admitted degree-seeking undergraduate student at Portland State University with unmet financial need, be making satisfactory academic progress as determined by Portland State University, be eligible for Oregon resident tuition or otherwise exempted from paying non-resident tuition, have been domiciled in the Metro District for at least the preceding 12 months, have completed and submitted the Free Application for Federal Student Aid (FAFSA) for each academic year, and have accepted all state and federal aid grants available to the student, if eligible to file the application.

- B. 20% to 30% of the revenues annually shall be used by Portland State University to hire and retain student advisors, counselors and tutors at Portland State University. The focus of these advisors, counselors and tutors is to help Portland State University students learn, succeed and get a degree in as timely a manner as possible.
- C. 20% to 30% of the revenues annually shall be used by Portland State University to attract and retain full and part-time college teachers and professors so that Portland State University students have access to the courses and faculty they need to progress through their academic programs, graduate in a timely fashion and succeed in their careers.
- D. Up to 3% of the revenues annually shall be used by Portland State University to establish and maintain a student emergency fund to provide financial support to students who experience a documented financial hardship that impairs their ability to continue their academic program at Portland State University.

To be eligible for assistance from the emergency fund, a student must be an admitted degree-seeking undergraduate student at Portland State University, be making satisfactory academic progress as determined by Portland State University, be eligible for Oregon resident tuition or otherwise exempted from paying non-resident tuition, and have been domiciled in the Metro District for at least the preceding 12 months.

- E. The collection, distribution and oversight of the payroll tax created by this Ordinance, restricted to those amounts reasonably necessary, which shall be subject to the audits set forth in Section 6.

Section 3. Revenues May Not Be Used for Other Purposes. Unless expressly stated herein, all revenues received from the payroll tax created by this Ordinance shall be provided to Portland State University. Revenues received from the payroll tax created by this Ordinance shall be used solely for the purposes established in Section 2 of this Ordinance. To the extent permissible and/or required by applicable law and this Ordinance, the District may establish a separate fund or funds for the purpose of receiving and distributing revenues from the payroll tax created by this Ordinance. Revenues received from the payroll tax created by this Ordinance shall be provided to Portland State University as soon as practicable.

Section 4. Protection for Local Taxpayers. The purpose of this Ordinance is to provide revenue for Portland State University in addition to the amounts received from the State of Oregon. In the event that any state appropriation or allocation for the benefit of Portland State University, or the allocation of such appropriations among the State's universities is modified by the Legislature, the Higher Education Coordinating Commission, or by any other entity or agency with the authority to modify Portland State University's allocation of such appropriations, in a manner that substantially reduces the funds available to Portland State University due to the revenue generated by this Ordinance, within one year following such modification and for the subsequent period of time any such modification is in effect:

- The payroll tax imposed by this Ordinance shall be suspended and not collected.
- The funding for scholarships provided to students under this Ordinance shall be suspended.
- The funding for the faculty positions and additional student support provided to students under this Ordinance shall be suspended.

OVERSIGHT AND ACCOUNTABILITY

Section 5. No Funds to Portland State University Administration, Buildings, or Unpermitted Purposes. Portland State University may use funds generated by the payroll tax created by this Ordinance only as permitted in Section 2. Portland State University may not use such funds for general university administration, buildings, or for other purposes not expressly permitted in Section 2.

Section 6. Audits. At least once every two years, the independent, elected Metro Auditor shall conduct an audit of the revenue generated by the tax created by this Ordinance and the distribution of that revenue. The auditor will make a public report to the Metro Council regarding the results of the audit. That report also shall be made available to the public. Revenue generated by the tax created by this Ordinance may be used to pay or defray the costs of the audits required by this Section.

Section 7. Progress Reports and Transparency to the Public. Portland State University shall make bi-annual reports to the public on how funds from the tax created by this Ordinance are spent and are affecting Portland State University's graduation rate. These reports will be published in newspapers and be publicly available on-line.

Section 8. Tax in Effect for Eight Years, Must be Re-Authorized or Discontinued After Eight Years.

- A. The payroll tax shall be assessed for Wages paid through December 31, 2024, but no payroll tax shall be assessed for Wages paid on or after January 1, 2025. After the expiration of the tax, the District and the Department shall continue to take all reasonable and necessary actions to ensure that taxes owing are paid.
- B. After December 31, 2024, the tax will expire unless reauthorized through a referral to the voters by the Metro Council or the voters' exercise of their Initiative power. To the extent permitted by applicable law, the voters of the District hereby request that on or before the November 2024 General Election, the Metro Council refer to the voters whether the tax imposed by this Ordinance should be extended for an additional eight years.

LIMITED ADMINISTRATIVE BURDEN

Section 9: No Additional Tax Forms or Government Agencies. It is the intent of the voters that, to the extent possible, the tax imposed by this Ordinance shall be administered in the same manner as the existing and well-established Tri-County Metropolitan Transportation District of Oregon ("Tri-Met") Payroll Tax, including the use of the same form(s) and mechanism(s) by the agencies responsible for collecting the tax.

DEFINITIONS

Section 10. Definitions. As used in this Ordinance, unless the context requires otherwise:

- A. "Department" means the Department of Revenue, State of Oregon.
- B. "District" means the Portland area metropolitan service district, encompassing all of the territory described in the Metro Charter, Chapter 1, section 3.
- C. "Employer" has the meaning prescribed by ORS 267.380.
- D. "Taxpayer" means an Employer subject to the tax under this Ordinance.
- E. "Wages" means remuneration for services performed by an employee for an Employer, including the cash value of all remuneration paid in any medium other than cash. "Wages" includes remuneration for services performed partly within the District. "Wages" does not include remuneration paid:
 - (1) For services performed in the employ of the United States of America and institutions (excluding hospitals) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended and in effect on December 31, 1988.
 - (2) For domestic service in a private home if the total amount paid to such employee is less than \$1,000 a year.
 - (3) For casual labor not in the course of the Employer's trade or business.

- (4) For services performed wholly outside of the District.
 - (5) To an employee whose services to the Employer consist solely of seasonal labor in connection with planting, cultivating or harvesting of agricultural crops.
 - (6) To seamen who are exempt from garnishment, attachment or execution under Sections 596, 597, 598, and 601 of Title 46, United States Code.
 - (7) To individuals temporarily employed as emergency fire fighters.
 - (8) If the remuneration is not subject to withholding under ORS Chapter 316.
 - (9) To employees' trusts exempt from taxation under Section 401 of the Internal Revenue Code, as defined by ORS 316.012.
- F. Notwithstanding any other provision of this Section, "Wages" includes:
- (1) Any amount included in the definition of "Wages" under Section 3121 of the Internal Revenue Code, as defined in ORS 316.012, by reason of the provisions of sections 3121(a)(5)(C), 3121(a)(5)(D), 3121(v)(1)(A), 3121(v)(1)(B), 3121(v)(3)(A), or 3121(a)(5)(E) of the Internal Revenue Code; or
 - (2) Any amount deferred under a nonqualified deferred compensation plan.
- G. Any amount taken into account as Wages by reason of subsection F of this Section and the income attributable thereto shall not afterwards be treated as Wages under this Section.

BUSINESS PAYROLL TAX

Section 11. Business Tax Imposed.

Beginning January 1, 2017, a tax is hereby imposed on every Employer that employs individuals who perform services within the District.

Section 12. Rate.

- A. Every Employer subject to tax pursuant to this Ordinance shall pay an amount equal to the product of: (i) the Payroll Tax Rate, as set forth in Section 12(B); and, (ii) the amount of Wages paid by such Employer with respect to services performed within the District.
- B. With respect to a tax period, the Payroll Tax Rate shall be 1/10th of 1% (0.1%).

Section 13. Tax Agent; Powers.

The Department is hereby designated the agent of the District for purposes of administering the tax imposed by this Ordinance and is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and

administration of this tax as it is authorized to exercise pursuant to ORS 305.620; including but not limited to entering closing agreements, waiving of interest and penalties, releasing liens, issuance of subpoenas, and making of refunds. Pursuant to ORS 305.620(5), costs incurred by the Department in the administration, enforcement, collection and distribution of the tax imposed by this Ordinance shall be first deducted from the taxes collected before distribution is made to the District.

Section 14. Tax and Reports Due Quarterly.

The tax imposed by this Ordinance shall be paid quarterly or other than quarterly if directed, to the Department, as agent for the District. Every Employer quarterly, on or before the last day of April, July, October and January, or other than quarterly if directed by the Department, shall pay over to the Department the amount imposed by this Ordinance as an excise tax and determined according to Wages paid by the Employer with respect to the employment of individuals during the preceding calendar quarter. Every Taxpayer shall, with each payment made by the Taxpayer to the Department, deliver to the Department on a return prescribed by the Department a statement of the total amount of Wages paid to the Taxpayer's employees during the quarterly or other period upon which the tax is required to be computed, and such other information as the Department requires. Every deficiency shall bear interest at the rate established by ORS 305.220 for each month or fraction of a month computed from the due date of the return to date of payment.

Section 15. Date Return Considered Filed or Payment Made.

A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for the payment of tax. The last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the Taxpayer by the Department.

Section 16. Assessment of Deficiency; Penalties and Interest on Deficiencies.

- A. As soon as practicable after the return is filed, the Department shall audit it, if the Department deems such audit practicable. If the Department discovers from the audit of a return or otherwise that a deficiency exists, it shall compute the tax and give notice to the Taxpayer of its proposal to assess the deficiency, plus interest and penalty for fraud or negligence, if any attaches. The notice shall state the reason for each proposed adjustment to the return and a reference to the ordinance, statute, regulation or Department ruling upon which the proposed adjustment is based. Each notice of deficiency and proposed assessment shall be certified by the auditor who audited the return that the auditor has audited the return and that the proposed adjustments to the return are made in good faith and not for the purpose of extending the period of assessment.
- B. Within 30 days from the date of mailing of notice of proposed assessment, the Taxpayer shall pay the proposed deficiency with interest computed to the date of payment and any penalty proposed, or within that time shall advise the Department in writing wherein its determination of deficiency is erroneous. If requested by the Taxpayer in the Taxpayer's written objection to the proposed deficiency, the Taxpayer shall have an opportunity to confer with the Department

or its delegate as to the proposed assessment at any time prior to the date such assessment is made.

- C. If neither payment nor written objection is received by the Department within 30 days after notice of proposed assessment has been mailed, the Department shall assess the deficiency, plus interest and fraud or negligence penalty, if any, and shall give notice of the amount so assessed.
- D. Every deficiency shall bear interest at the rate established by ORS 305.220 for each month or fraction of a month computed from the due date of the return to date of payment.
- E. The penalty for negligent failure to pay tax when due shall be five percent of the amount of tax and shall be in addition to any interest required by subsection D of this section. If the return was falsely prepared and filed with the intent to evade the tax, a penalty equal to 100 percent of the deficiency shall be assessed and collected and shall be in addition to any interest required by subsection D of this section.
- F. All payments received must be credited first to penalty, then to interest accrued, and then to tax due.
- G. Mailing of notice to the Taxpayer at the Taxpayer's last known address shall constitute the giving of notice of proposed assessment as prescribed in subsection "A" of this section or of notice of assessment as prescribed in subsection "C" of this section. The provisions of this Ordinance with respect to revision and appeal shall apply to the assessed deficiency, penalties and interest.
- H. Additional assessments and deficiency assessments with respect to any tax return shall be made pursuant to this section, and not otherwise, within the time limits prescribed by Section 17, including but not limited to the assertion of additional tax arising from:
 - (1) The failure to report properly all Wages which are the measure of the tax;
 - (2) The deduction of Wages not permitted by law;
 - (3) Mathematical errors in the return or the amount of tax shown due in the records of the Department;
 - (4) Improper credits or offsets against the tax claimed in the return.

Section 17. Time Limit for Assessment of Deficiency.

- A. At any time within three years after the return was filed, the Department may give notice of proposed assessment as prescribed in Section 16.
- B. The limitation to the giving of notice of proposed assessment of a deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.
- C. The tax deficiency must be assessed and notice of tax assessment mailed to the Taxpayer within one year from the date of the notice of proposed assessment unless an extension of time is agreed upon. If, prior to the expiration of any

period of time prescribed in this section for giving of notice of proposed assessment or of assessment, the Department and the Taxpayer consent in writing to the deficiency being proposed or assessed after the expiration of such prescribed period, such deficiency may be proposed or assessed at any time prior to the expiration of the period agreed upon.

Section 18. Penalty Assessed for Failure to File Return or to Pay Tax When Due; Interest.

- A. If a Taxpayer (1) fails to file a return within the time required by this Ordinance or (2) fails to pay a tax imposed by this Ordinance at the time the tax becomes due, there shall be added to the amount of tax required to be shown as tax on the return a delinquency penalty of five percent of the amount of such tax.
- B. If the failure to file a return continues for a period in excess of three months after the due date:
 - (1) There shall be added to the amount of tax required to be shown on the return a failure to file penalty of 20 percent of the amount of such tax; and
 - (2) Thereafter the Department may send a notice and demand to the person to file a return within 30 days of the mailing of the notice. If after such notice and demand no return is filed within the 30 days, the Department shall determine the Wages paid by the Taxpayer for services rendered within the District according to the best of its information and belief, assess the tax accordingly with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the Department and give written notice of the determination and assessment to the person required to make the filing.
- C. A penalty equal to 100 percent of any deficiency determined by the Department shall be assessed and collected if:
 - (1) There is a failure to file a return with intent to evade the tax; or
 - (2) A return was falsely prepared and filed with intent to evade the tax.
- D. Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for each month or fraction of a month, computed from the time the tax became due, during which the tax remains unpaid.
- E. Each penalty imposed under this section is in addition to any other penalty imposed under this Section. However, the total amount of penalty imposed under this Section and Section 16 with respect to any deficiency shall not exceed 100 percent of the deficiency.
- F. For purposes of subsections A and B of this Section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax and by the amount of any credit against tax which may be properly claimed upon the return.
- G. A Taxpayer shall be deemed to have been notified under this section when the Department shall have mailed a written notice to the last known address of the Taxpayer.

Section 19. Books and Records.

Every Employer shall maintain records adequate to determine the total Wages by which the excise tax imposed by this Ordinance is measured. The Department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the Wages paid by any Taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records, or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the Taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The Department shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the circuit court or in the tax court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of the provisions of this ordinance and the laws under which it is enacted.

Section 20. Requiring Return or Supplementary Return.

If the Department is of the opinion that a Taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, all Wages paid, it may require from the Taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the Wages which the Taxpayer paid during the quarter for which the return is made, whether or not paid with respect to services performed within the District. If from a supplementary return, or otherwise, the Department finds that any Wages by which the tax is measured have been omitted from the original return, it may require the Wages so omitted to be disclosed under oath of the Taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the Taxpayer from any of the penalties to which the Taxpayer may be liable under any provisions of law, whether or not the Department required a return or a supplementary return under this section.

Section 21. Tax as Debt; Termination of Taxable Period and Immediate Assessment of Tax.

- A. Every tax imposed upon Employers measured by Wages paid to employees, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the District, from the person or persons liable therefor.
- B. If the Department finds that a Taxpayer designs quickly to depart from the state or to remove the Taxpayer's property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past quarter or the tax quarter then current unless such proceedings be brought without delay, the Department shall declare the current taxable period for such Taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the Taxpayer. Simultaneously, the Department, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding tax quarter (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any quarters open to assessment under the provisions of the applicable law. The Department shall give notice to the Taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are

issued to the Taxpayer or mailed to the Taxpayer's last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of the Department, made as provided in this section, whether made after notice to the Taxpayer or not, shall be for all purposes presumptive evidence of the Taxpayer's design, and the certificate of the Department of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued.

Section 22. Waiver, Reduction, Cancellation or Compromise of Tax, Penalties and Interest.

- A. The Department may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefore, waive, reduce or compromise any tax balance of \$10 or less or any part or all of the penalties and interest provided for in this Ordinance.
- B. The Department may cancel any tax or portion thereof assessed against a Taxpayer, including any penalty and interest, which has not been collected if the Department determines that the tax is uncollectible or the administration and collection costs involved would not warrant collection of the amount due. Each such cancellation shall be evidenced by a written record in the files of the Department, a copy of which shall be sent to the District. Upon canceling the tax, the Department shall also cause to be canceled or released any lien which it may have for the tax so canceled.

Section 23. Warrant for Collection of Taxes.

- A. If any tax imposed upon Employers measured by Wages paid to employees or any portion of such tax is not paid within 30 days after it becomes due (or within five days, in the case of the termination of the tax quarter by the Department under the provisions of Section 21 and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the Department, the Department may issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the Taxpayer found within the county, for the payment of the amount of the tax; with the added penalties, interest, and the sheriff's cost of executing the warrant, and to return such warrant to the Department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.
- B. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the sheriff's county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the Taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the Taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for the sheriff's services in executing the warrant, to be added to and collected as part of the warrant liability.

- C. In the discretion of the Department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect excise taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.
- D. If a warrant is returned not satisfied in full, the Department shall have the same remedies to enforce the claim for taxes against the Taxpayer as if the people of the state had recovered judgment against the Taxpayer for the amount of the tax, and shall balance the Taxpayer's assessment record by transferring the unpaid deficiency to the Taxpayer's delinquent record.

Section 24. Liability of Transferee of Property of Taxpayer for Taxes Imposed on Taxpayer.

- A. When a Taxpayer ceases to exist or is no longer subject to the jurisdiction of this District (although subject to the courts of a state having comity with the State of Oregon), being indebted for excise taxes levied upon Employers, the transferee of the money or property of the Taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the Taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the Taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (1) after the Department of Revenue's certificate of release with respect to such decedent's estate has been filed with the clerk of the probate court, or (2) where no release has been filed but 90 days have elapsed following a request to the Department by the decedent's representative for such release, unless within that time the probate court, upon application by the Department, finds reasonable grounds for extending the period and allows the Department additional time in which to issue a release.
- B. The amount for which a transferee of the property of a Taxpayer is liable in respect of any such tax or deficiency in tax, including penalties and interest, whether shown on the return of the Taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee and collected and paid in the same manner and subject to the same provisions and limitations as would apply to the Taxpayer had the Taxpayer or it continued subject to the jurisdiction of this District, except as provided in this section.
- C. As used in this section, the term "transferee" means one not a bona fide purchaser for value and includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor or a corporation which is a party to a corporate reorganization, and persons acting on behalf of such transferees in a fiduciary capacity.
- D. The period of limitation for assessment of any such liability of a transferee shall be as follows:
 - (1) In the case of the liability of an initial transferee of the property of the Taxpayer, within one year after the expiration of the period of limitation for assessment against the Taxpayer;

- (2) In the case of the liability of a transferee of a transferee of the property of the Taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the Taxpayer;
 - (3) If, before the expiration of the period of limitation for the assessment of the liability of the transferee, as set forth in paragraph (1) or (2) of this subsection, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the Taxpayer or last preceding transferee, then the period of limitation for assessment of the liability of the transferee shall expire one year after final judgment has been rendered in the court proceedings;
 - (4) If, before the expiration of the time prescribed in paragraph (1), (2) or (3) of this Subsection for the assessment of the liability, both the Department and the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.
- E. For the purposes of this section, if the Taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitation for assessment against the Taxpayer shall be the period which would be in effect had death or termination of existence not occurred.
- F. In the absence of notice to the Department of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax or deficiency in tax, including penalties and interest thereon, imposed by this Ordinance, if mailed to the person subject to the liability at that person's last-known address, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

Section 25. Refunds.

- A. If the amount of the tax found due as computed is less than the amount theretofore paid, the excess shall be refunded by the Department with interest at the rate or rates, and shall be computed in the manner, established by ORS 305.220 from the time the tax was paid to the time the refund is made. No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the Taxpayer in compliance with the manner prescribed by the Department. The amount of the refund, exclusive of interest thereon, shall not exceed the portion of the tax paid during such period preceding the filing of the claim, or, if no claim is filed, then during which a claim might have been filed. When there has been an overpayment of any tax imposed, the amount of the overpayment and the interest thereon shall be credited against any tax, penalty or interest then due from the Taxpayer, and only the balance shall be refunded.
- B. Notwithstanding any provision to the contrary in subsection "A" of this section, if, prior to the expiration of the period prescribed in subsection "A" of this

section, the Department and the Taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the Taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the Department. The Department shall have the power to consent to such refund only where the Taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three-year period prescribed.

Section 26. When Appeal Stays Collection Proceedings.

- A. An appeal to the Department from an assessment of taxes or additional taxes shall not stay proceedings to collect any unpaid tax if the Department believes that collection of the tax will be jeopardized by delay.

MISCELLANEOUS

Section 27. Metro Council to Take Necessary Actions. The Metro Council may take all necessary actions to effectuate this Ordinance. To the extent the Department declines to, or lacks authority to, take any of the actions set forth in this Ordinance, the voters hereby request that the Metro Council take all necessary action to ensure that the taxes imposed by this Ordinance are collected and are distributed only for the specific purposes described in this Ordinance.

Section 28: Severability Clause. If any part, section or provision of this Ordinance or any tax against any Taxpayer imposed by this Ordinance is found unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity will affect only that part, section or provision of this Ordinance or tax or Taxpayer, and will not affect or impair any other part, section or provision of this Ordinance or any other tax or Taxpayer under this Ordinance.

BALLOT TITLE AND EXPLANATORY STATEMENT FOR PROPOSED METRO INITIATIVE

Submitted February 12, 2016 by Alison R. Kean, Metro General Counsel

Explanatory Statement

This measure is an ordinance proposed by citizen initiative that adds “funding for Portland State University” to Metro’s current regional functions.

Starting January 1, 2017, the measure imposes a region-wide payroll tax on employers of individuals who perform services in or partly within the metropolitan region, and assigns responsibility to administer the tax to Metro. Employers subject to the tax include private corporations, the State of Oregon and its political subdivisions, but not school districts or entities exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Taxable wages do not include remuneration paid by the United States or by Section 501(c)(3) entities, or remuneration for domestic service of less than \$1,000 a year, for seasonal agricultural work, or for other work of the type excluded from the tax, as described in the measure.

Employers would pay the tax at the rate of one-tenth of one percent of wages paid to employees working within or partly within the metropolitan region, which means that for every \$50,000 in wages paid, \$50 will be collected by this tax. Petitioners estimate that the tax will generate \$35 - \$40 million per year for PSU.

The measure allows PSU to use the tax revenue only for:

- Need-based scholarships for PSU students from the metropolitan region;
- PSU counselors, advisors, tutors, teachers and professors;
- Emergency tuition assistance for PSU students;
- Costs incurred by Metro and the Department of Revenue to collect and distribute the tax;
- Bi-annual audits by the Metro Auditor.

Bi-annual reports by PSU are required regarding how the tax revenue has been spent and its affect on graduation rates. If the State of Oregon reduces funding for PSU due to the tax, the tax is suspended.

Metro is required to collect the tax in coordination with the Oregon Department of Revenue and provide the funds to PSU. The measure states

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that the tax is intended to be administered in the same manner as the existing TriMet payroll tax. Taxes shall be paid quarterly. Returns are subject to audit, assessment of deficiencies, penalties and interest at any time within three years after filing, with exceptions. Penalties are assessed for failure to file a return or to pay tax when due, and taxes become debt of the person liable for payment. Employers are required to maintain wage and tax records for state inspection. The Department of Revenue has authority to require a supplementary return, issue warrants and refunds, and waive, reduce, cancel or compromise the tax, penalties, or interest.

Tax will expire December 31, 2024 unless reauthorized by voters of the metropolitan region or Metro Council. Metro Council has authority to effectuate the measure's provisions by all necessary actions.

(449 words)