FEB 21 '18 10:51AM AUDITOR

PORTLAND CLEAN ENERGY COMMUNITY BENEFITS INITIATIVE 2018

The people of the City of Portland, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be added to and made part of the Portland City Code, Chapter 7 (Business Licenses).

Section 1 – Findings

1. The City of Portland has adopted a Climate Action Plan, which affirms the importance and value of local initiatives and community-based development to decrease carbon emissions, while also seeking to maximize the economic, social and environmental benefits of transitioning away from fossil fuels. In June, 2017, in response to changed national priorities, the City reaffirmed the goals of the Climate Action Plan and established a new goal to meet 100 percent of community-wide electricity needs with clean renewable energy by 2035.
2. To meet the City's Climate Action Plan and 100% clean renewable energy goals there is an urgent need to fund and accelerate greenhouse gas reductions and energy efficiencies, especially in underserved communities.
3. Climate change has a disproportionate impact on the health and financial well-being of low income communities and communities of color.
4. To implement the Climate Action Plan and this Measure, there is a critical need for more skilled workers. Members of historically disadvantaged groups, including women, people of color, and the chronically underemployed are under-represented in the skilled work force, and therefore offer an enormous untapped resource to meet the goals of the Climate Action Plan.
5. Large retail businesses are a significant contributor to carbon emissions. They encourage consumption of heavily packaged and non-recyclable products, have carbon intensive shipping, manufacturing, and supply chain practices, and share responsibility for generating a substantial portion of the City's overall greenhouse gas emissions when customer traffic and facility operations are considered. These businesses have an inherent responsibility and the financial capacity to support the goals of this Measure, and an incentive to remain in the City to engage in retail activities here.

Section 2 – Policy and Purpose of Initiative

1. Based on the findings set forth above, the purpose of this Ordinance is to provide a consistent long-term funding source and oversight structure to ensure that the City of Portland's Climate Action Plan is implemented in a manner that supports social, economic and environmental benefits for all Portlanders, including the development of a diverse and well-trained workforce and contractor pool in the field of clean energy.

2. This ordinance requires large retailers (those with gross revenues nationally exceeding $1 billion, and $500,0000 in Portland) to pay a surcharge of one percent (1%) on gross revenues from retail sales in Portland, excluding basic groceries, medicines, and health care services.
3. Revenues raised through this business surcharge on Large Retailers will be deposited into a separate fund designated as the "Portland Clean Energy Community Benefits Fund." The money in this fund will be used to finance programs that meet the following priorities:
    a. Clean Energy Projects:
        i. Renewable energy and energy efficiency projects, with an emphasis on those that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
        ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.
    b. Clean Energy Jobs Training: Job training, apprenticeship programs, and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
    c. Priority will be given to programs that both reduce greenhouse gases and promote economic, social, and environmental benefits.
4. This ordinance creates a "Portland Clean Energy Community Benefits Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure, as set forth in paragraph 1 of this section.

Section 3. Definitions

Unless otherwise defined in this section, terms that are defined in Portland's Business License Law, Chapter 7.02 of the Portland City Code, shall have the meanings provided therein.

1. "Bank" has the same meaning as used in ORS § 706.008(1).
2. "City" means the City of Portland.
3. "Clean renewable energy" means energy that is not produced from fossil fuels or nuclear power and which is produced from sun, wind, water, or other sources of renewable energy as identified by the City of Portland. In-river hydropower projects that harm or have the potential to harm salmonids or other aquatic species, or Native

American or other communities that rely on such species shall not be appropriate for support under this Measure.

4. "Energy Efficiency" means a measure of how efficiently an appliance, building, organization or country uses energy. Examples of projects designed to increase energy efficiency include, but are not limited to:
    a. heating, lighting water and cooling efficiencies;
    b. repairs to increase the performance of the building envelope;
    c. community initiated energy plans;
    d. energy storage; and
    e. green building design.
5. "Greenhouse gas reduction projects" means a project implemented within the City of Portland that reduces emissions or the presence of carbon dioxide or other compounds that contribute to climate change.
6. "Greenhouse gas sequestration" means a project that involves long-term storage of carbon dioxide or other pollutants to mitigate or defer global warming. Examples include but are not limited to:
    a. protections and restoration of urban tree canopy;
    b. protection and restoration of greenspace and wetlands; and
    c. agricultural practices that increase the capacity of the soil to store carbon, also referred to as "regenerative agriculture."
7. "Green infrastructure" means a project that uses vegetation, soils, and other elements and practices to restore some of the natural processes required to reduce greenhouse gases while also benefiting water quality and creating healthier urban environments. Examples include but are not limited to:
    a. urban tree canopy;
    b. green roofs;
    c. greenspace protection;
    d. bioswales; and
    e. green streets.
8. "Large retailer" means a business that:
    a. is subject to the Portland Business License Tax;
    b. had annual gross revenue from retail sales from all locations in the United States where the taxpayer conducts business that exceeded $1 billion ($1,000,000,000) in the prior tax year; and
    c. has annual gross revenue from retail sales within the City of $500,000 or more in the prior tax year.
    d. the term "Large Retailer" does not include:
        i. any manufacturer or other business that is not engaged in retail sales within the City;
        ii. any entity operating a utility within the City;

iii. any cooperative recognized under state or federal law; or
iv. a federal or state credit union.

9. "Program[s]" means an organized effort by a qualified non-profit organization to achieve greenhouse gas reduction outcomes in a framework that delivers the related social justice outcomes identified in this Measure. The qualified non-profit can apply solely or in partnership with other non-profit entities, government entities or for-profit businesses. These programs will be the primary way funds collected under this Measure are distributed from the City to achieve the goals of the Measure.
10. "Qualified groceries" means food products that qualify for purchase under the U.S. Department of Agriculture Supplemental Nutritional Assistance Program ("SNAP").
11. "Qualified medicine or drugs" means any medicine, drugs, or medical devices that are regulated by the U.S. Food and Drug Administration as a medicine or drug.
12. "Qualified health care services" means any service that involves the provision of health care to the public, including but not limited to doctor, medical clinic and hospital visits and all related services, health insurance, and any care provided by senior care facilities or rehabilitation facilities. This definition includes but is not limited to all services defined as "health care services" under Oregon statute ORS 750.005.
13. "National gross revenue" means the gross revenue a business receives nationally in a given year from retail sales.
14. "Non-profit organization" means any organization recognized by the Internal Revenue Service (IRS) under Sections 501 and 521(a) of the Internal Revenue Code, in addition to other tax-exempt entities recognized by the IRS, such as schools.
15. "Regenerative agriculture" means farming and land management practices that reverse climate change by rebuilding soil organic matter and restoring degraded soil biodiversity.
16. "Retail sale" means sale to a consumer for use or consumption, and not for resale. Retail sale includes but is not limited to the sale of services, including but not limited to retail banking services.

Section 4. Surcharge on Large Retailers Imposed

1. **Imposition of Surcharge and Rate:** Large Retailers shall pay a 1 percent (1%) surcharge on gross revenue from retail sales within the City, unless specifically exempted.
2. **Calculation of Gross Revenue from Retails Sales.** In calculating the amount of gross revenue for purposes of this Large Retailer surcharge, a deduction is allowed for the following:
    a. The amount of the Portland Business License Tax, if any, paid to the city;
    b. Retail sales of qualified groceries;
    c. Retail sales of qualified medicines or drugs; and

d. Retail sales of qualified health care services.

3. **Effective Date and Penalties:** The Large Retailer surcharge will apply for all tax years beginning on or after January 1, 2019. Payments will be made consistent with the schedule required in Portland City Code 7.02.530. No penalties or interest for failure to make quarterly estimated payment for the Large Retailer Surcharge will be charged or imposed for the 2019 tax year. Thereafter, penalties and interest will be calculated as provided for in the Portland City Code.

Section 5. Surcharge Collection and Enforcement.

1. The Revenue Division of the City of Portland shall administer and enforce collection of this Large Retailer surcharge. The Division may adopt rules as necessary to implement the goals and purposes of the measure consistent with the processes provided in Portland City Code 7.02.210.
2. The Division shall within six months of the passage of the Measure prepare a list of businesses it is aware of that meet the definition of a Large Retailer and notify such businesses of their obligations under this Measure.
3. The Division may recover all reasonable costs for such work from the Fund and such costs will not be considered part of the Fund administrative cost cap.
4. Should any proceeds under this Measure be deemed to constitute revenues described in Article IX, section 3a, of the Oregon Constitution, those revenues shall be deposited in a Climate Transportation Investment Account to be managed by the Portland Bureau of Transportation. Such funds shall, consistent with the limitations in Section 3(a), be used in a manner that promotes the goals of this measure.

Section 6. Portland Clean Energy Community Benefits Fund

1. The proceeds from this Large Retailer business surcharge, after deducting the reasonable costs of administering and collecting the revenue, shall be placed in a special fund to be designated as the "Portland Clean Energy Community Benefits Fund" ("Fund").
2. Money in the Portland Clean Energy Community Benefits Fund shall be dedicated to the funding of the following, as described in more detail in Section 8 below:
    a. Clean Energy Projects:
        i. Renewable energy and energy efficiency projects, with an emphasis on programs that benefit low income individuals and that broaden access to energy efficiency and clean renewable energy infrastructure to low income communities and communities of color;
        ii. Regenerative agriculture and green infrastructure projects that result in sequestration of greenhouse gases and support sustainable local food production.

b. Clean Energy Jobs: Programs to increase access to and support for job training, apprenticeship programs and contractor support initiatives that prioritize skills training and workforce development for economically disadvantaged and traditionally under-employed workers, including communities of color, women, persons with disabilities, and the chronically underemployed.
c. Priority will be given to programs that both reduce greenhouse gases and promote social, economic and environmental benefits.

3. No more than 5% of the fund shall be spent on expenses associated with administering the fund once established. Specifically, the limitation will not apply to reasonably necessary expenses incurred in calendar year 2019 and 2020, while the program is being established and systems put in place for administering and collecting the surcharge and distributing funds.
4. The Fund shall be subject to a financial audit every year and a performance audit every two years, with the costs of any audit excluded from the 5% limitation for administrative expenses.
5. The Mayor and City Council shall generally accept the funding recommendations from the Committee. If the Mayor or Council determines that they will reject a funding recommendation, they shall provide the Committee with a written explanation of the decision.

Section 7. The Portland Clean Energy Community Benefits Fund Committee

1. There shall be established a "Portland Clean Energy Community Benefits Fund Committee ("Committee") made up of experts and communities members to (1) make funding recommendations to the Mayor and City Council; and (2) evaluate the effectiveness of the Fund in achieving the goals of this Measure.
2. The Committee shall be made up of nine members who are residents of the City of Portland. Members shall be appointed by the Mayor for staggered four (4) year terms, with the exception of the first Committee, which will have five (5) members appointed for four-year terms and four (4) members appointed for two-year terms.
3. For the first Committee, each City Council member (including the Mayor) may nominate a committee member who meets the qualifications set forth in subsection 4.c of this section. Those five nominees, once appointed, shall then recommend four (4) additional members to the Mayor for appointment. The Mayor shall appoint members consistent with the recommendations of each City Council member and the Committee, absent good cause. Thereafter, when a member resigns or their term expires, the Committee shall recommend a replacement member.
4. The Mayor shall appoint members of the Committee based on the following background and expertise:

a. The Committee shall reflect the racial, ethnic and economic diversity of the City of Portland. At least two members will be residents living east of 82nd Avenue.
b. Committee members shall have demonstrated commitment to furthering the goals of the City's Climate Action Plan and empowering historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed.
c. At least one member of the Committee should have significant demonstrated experience in the following fields:
    i. Residential renewable energy and energy efficiency projects;
    ii. Commercial renewable energy and energy efficiency projects;
    iii. Workforce development, job training and apprenticeship programs that are targeted at reaching historically disadvantaged groups;
    iv. Experience promoting minority-owned and/or women-owned businesses;
    v. Sustainable local food production, green infrastructure and greenhouse gas sequestration; and
    vi. Financing tools that help make renewable energy and energy efficiency available to a broader spectrum of the public.
d. While Committee members may have experience in multiple fields, members with deep expertise in a single field will be encouraged in order to create a balanced Committee in which no one area of expertise dominates.

5. The Committee shall:
    a. Establish and maintain a public website that includes the Committee's membership, meeting agenda, meeting notes, governance standards and policy statements.
    b. Solicit applications for funding from qualified nonprofit organizations registered with the State of Oregon. Requests for proposals as well as applications shall be posted on the Committee's website.
    c. Evaluate applications for funding to determine whether they meet the allocation priorities set forth in Section 8, and whether the applicant non-profit organization has the capacity to implement the program and project as described and to ensure fiscal accountability.
    d. Make recommendations for funding to the Mayor, consistent with the allocation priorities set out in Section 8 below. All applications and final recommendations will be posted on the Committee's website. If the Mayor or City Council reject a funding recommendation, then their explanation for that decision will be posted on the Committee's website.
    e. Adopt a methodology to measure, track and report to the public, the Mayor, and the City Council the effectiveness of the programs in implementing the

City's Climate Action Plan in a manner that supports social, economic and environmental justice, including developing a diverse and well-trained workforce and contractor pool in the field of energy efficiency, renewables, green energy initiatives generally. All fund recipients shall file a report tracking their success in meeting the stated objectives.

f. Adopt a workforce and contractor equity plan to ensure that the work funded by the Committee is being performed by historically disadvantaged groups, including measurable and ambitious goals for the training and hiring of historically disadvantaged groups, including women, people of color, people with disabilities, and the chronically underemployed and measurable goals for contracting with businesses owned or operated by such groups. In developing the plan and goals, the Committee shall consult with workforce and contractor equity stakeholders as well as incorporate appropriate best practices from City procurements. Progress in meeting these goals shall be prominently displayed on the Committee's homepage and, if goals are not being met, shall be the Committee's top priority to address.

g. Make recommendations to the City Council on changes to this law as necessary to ensure the effectiveness of this Measure in achieving the stated goals of implementing the City's Climate Action plan in a manner that supports social, economic and environmental justice.

6. Staff within the Bureau of Planning and Sustainability shall assist the Committee as needed to initiate and begin implementation of the provisions of this measure. Once the Committee is appointed and a framework for implementing this measure is in place, the Committee may decide to either continue to utilize Bureau of Planning and Sustainability staff to support its work or hire its own program support staff. Staff costs shall be included the calculation of administrative expenses.

Section 8. Funding Allocation Priorities

1. The Committee shall allocate funds consistent with the goals of this measure and within the following allocation percentages to the extent possible:
    a. 40% to 60%: Renewable energy and energy efficiency programs.
        i. This category includes residential, commercial and school-based projects.
        ii. Programs broadening access to energy efficiency and renewable energy, such as community-initiated energy strategies and decentralized renewable energy, shall be a high priority.
        iii. At least one half, of the projects under this section should specifically benefit low-income residents and communities of color.

iv. Funding agreements shall include terms to encourage rent stability including, but not limited to, provisions barring owners from using improvements funded by this Measure as a basis for rent increases.

b. 20% - 25%: Clean energy jobs training, apprenticeships and contractor support.
   i. This category is intended to support non-profit programs that directly facilitate and promote job training, pre-apprenticeship programs, apprenticeship programs and contractor training and support that are primarily aimed at supporting economically disadvantaged and traditionally underrepresented workers in the skilled workforce (including people of color, women, persons with disabilities and chronically un-employed).
   ii. Programs supporting entry into union registered apprentice trades shall be a high priority.

c. 10%: - 15%: Regenerative agriculture and green infrastructure programs that result in sequestration of greenhouse gases.
   i. This category is intended to reduce greenhouse gases by supporting sustainable local food production and green infrastructure programs that result in sequestration of greenhouse gases within the City.
   ii. Programs funded under this category should be designed to help demonstrate and promote the broader adoption of such practices, with a particular focus on low-income communities and communities of color.

d. 5%: Future Innovation
   i. This category is intended to provide the Committee with flexibility to fund a project that does not directly fall under one of the other categories, but which provides an opportunity to further the goals of this measure.

2. In making funding decisions, the Committee shall consider the following:
   a. Co-benefits: Whether a project prioritizes greenhouse gas reduction outcomes in a manner that promotes the economic, social and environmental justice outcomes identified in this Measure.
   b. Geographical diversity, with the goal of funding projects that operate at the neighborhood level (including east of 82nd Avenue) as well as citywide. The Committee may also consider providing support to neighborhood-scale organizations to develop and expand their organizational capacity to implement projects on a larger scale.
   c. Organizational representation. To ensure that the City's work addressing climate change is inclusive as well as effective, at least 20% of the Committee's Funds shall be awarded to non-profit organizations with a stated mission and track-record of programs that benefit economically disadvantaged community members, including people of color, women, people with disabilities, and the chronically unemployed. The qualified non-profit can apply solely or in

partnership with other non-profit entities, government entities or for-profit businesses.

d. Leveraging. Programs that would leverage additional governmental or private funding and therefore increase the overall program effectiveness should be priorities, but are not required.
e. If there are insufficient qualified applicants, funds may be held over to the following year.
f. If the Committee determines that the level of funding under any of these distribution categories is not meeting the climate or equity goals of the Measure, the Committee may recommend that the City Council amend the code to alter the allocation percentages.

3. Terms of Grants
   a. U.S. made renewable energy products: Solar, wind, or other renewable energy systems purchases with monies provided by the Fund shall be predominantly manufactured in the United States unless a product meeting this criteria is unavailable or the cost is prohibitive.
   b. Workforce and Contractor Equity Agreement. Recipients of Funds must agree to the Workforce and Contactor Equity Agreement developed by the Committee.
   c. Family Wage Standards. Wage standards for projects funded by this Measure shall be no less protective of workers than those contained in the State of Oregon's Energy Efficiency and Sustainable Technology Act, ORS 470.560(2)(g).

Section 9. Amendment to Portland City Code PCC 7.02.600(G)

Portland City Code 7.02.600 (Income Determinations) is amended to read as follows (***italicized and bolded language is new***):

"A. Owners Compensation Deductions. "Owners Compensation Deduction" is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of $500 will be rounded up or down to the next multiple of $500 at the Division's discretion.

1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed $80,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed $90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed $100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

B. Sole Proprietorships. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

C. Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

D. Corporations. In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than five (5) percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than five (5) percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

E. Estates and Trusts. In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

F. Non-business Income. In determining income under this Section, an allocation is allowed for non-business income as reported to the State of Oregon. However, income treated as non-business income for State of Oregon tax purposes may not necessarily be defined as non-business income under the Business License Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business is treated as business income for purposes of the Business License Law. Income derived from non-unitary business functions reported at the State of Oregon level may be considered non-business income. Non-unitary income will not be recognized at an intrastate level. The taxfiler has the burden of showing that income is non-business income.

G. Taxes Based on or Measured by Net Income. In determining income, no deduction is allowed for taxes based on or measured by net income ***or for the surcharge imposed by this measure.*** No deduction is allowed for the federal built-in gains tax.

H. Ordinary Gain or Loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

I. Net Operating Loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. However, in no case may a net operating loss be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax.

2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.

3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.

4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.

5. The net operating loss in any license tax year is allowed as a deduction in the five (5) succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period."

Section 10. Severability clause.

If any part, section or provision of this ordinance, or surcharge imposed pursuant to this ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the ordinance and the remaining parts, sections or provisions shall remain in full force and effect.