

10-19-2012

## Ballot Measure 26-146

City Club of Portland (Portland, Or.)

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*A City Club Report on*

# BALLOT MEASURE 26-146



**City Club *of* Portland**

*Supplement to the City Club of Portland Bulletin, Vol. 95, No. 20, October 19, 2012*

# City Club *of* Portland

The mission of City Club is to inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship.

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# CITY OF PORTLAND MEASURE 26-146:

## Restore School Arts, Music Education; Fund Arts through Limited Tax

Measure 26-146, the Portland Arts Education and Access Income Tax Measure, creates a new dedicated funding source for support of school- and community-based arts. Funds would be raised through a \$35 per-person tax imposed on all adult income-earning residents of Portland residing in households above the federal poverty level.

Your committee believes that both classroom arts instruction and community-based arts organizations are critical to the long-term success of our city. A strong arts program in our public schools is important in educating engaged citizens and a creative workforce. A vibrant arts community attracts highly skilled workers and innovative companies to our city. There is also consensus among committee members that funding for such activities is unduly constrained by Oregon's tax structure.

Opponents of Measure 26-146 are concerned by its misleading ballot title, questions concerning its constitutionality, the tax's impact on low-income residents, and the many details that are left to intergovernmental agreements and contracts that have not been finalized.

Despite sharing some of these concerns, the majority recommends voting for Measure 26-146 because of the importance of arts and arts education to Portland.



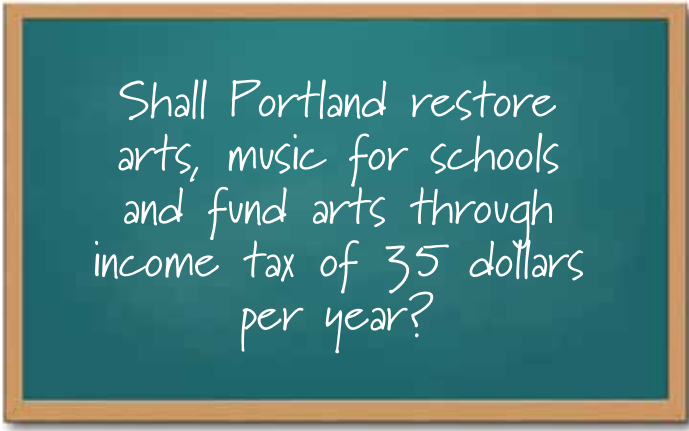
### **The majority recommends a "YES" vote on Measure 26-146.**

The minority believes that these problems are too numerous to warrant a "yes" vote and that the Measure is a poorly-designed, piecemeal response to the systemic problems arising out of Oregon's tax system.



### **The minority recommends a "NO" vote on Measure 26-146.**

City Club members will vote on this report on Friday, October 19, 2012. Until the membership vote, City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club Bulletin dated October 26, 2012 and online at [www.pdxcityclub.org](http://www.pdxcityclub.org).



## INTRODUCTION

Ballot Measure 26-146 will appear on the ballot as follows:

### CAPTION

Restore School Arts, Music Education; Fund Arts through Limited Tax.

### QUESTION

Shall Portland restore arts, music for schools and fund arts through income tax of 35 dollars per year?

### SUMMARY

This measure creates a limited income tax of \$35 for each adult income-earning Portland resident. Individuals in households below federal poverty level pay no tax.

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

Accountability measures include:

- Administrative costs are capped.
- Expenditures are subject to oversight by citizen committee.
- Independent financial audits of RACC and School District expenditures.

Estimated funds raised will be \$12 million annually. The tax is effective beginning with 2012 tax year, with payment due when state taxes are due.

## BACKGROUND

### Explanation of Measure 26-146

Measure 26-146 (the “Measure”) creates a new tax of \$35 per person, per year, imposed on all income-earning adult residents of Portland, except those living in households at or below the federal poverty level.\* The revenue produced by this tax would be directed to a new “Arts Education and Access Fund” (the “Fund”) administered by the City of Portland Revenue Bureau.

The money in the Fund would be distributed pursuant to a two-tier priority system. Money would be distributed first to the six school districts operating schools within the City of Portland.† The funds would be directed, pursuant to intergovernmental agreements, to hiring certified arts or music teachers for kindergarten through 5th grade classes. School district funds would be distributed based on a ratio of one teacher per 500 K-5 students, with total first-year disbursements estimated to be \$6.34 million.<sup>1</sup>

Once the school districts are fully funded pursuant to the Measure’s formula, remaining funds (estimated to be \$5.87 million in the first year)<sup>2</sup> would be distributed to the Regional Arts & Culture Council (RACC). At least 5 percent of the funds distributed to RACC would be directed to grants for “high-quality arts experiences [for] Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.”<sup>3</sup> Although the proposed Measure sets a minimum level for this allocation at 5 percent of the funds received by RACC, the projected budget would permanently fund arts access grants at between \$1.5 million and



\$2 million annually.<sup>4</sup> Remaining RACC funds would be used for general operating grants to Portland-based arts organizations.

Different sources have developed different forecasts predicting how much of the Fund will be distributed to each category. Since the K-5 arts education funding receives priority, the amount received by RACC will depend on total collections. Despite the differing forecasts, witnesses estimated that roughly half of the Fund will be distributed to RACC.

### Oregon School Finance

The tax is designed as a permanent income tax, rather than a property tax levy, and would be held at a constant \$35 rate per qualifying taxpayer in perpetuity.<sup>5</sup> The Measure’s stated purpose is to “restore arts and music education to our schools by providing stable, long-term funding for certified arts and music teachers.”<sup>6</sup> The need for both the Measure and its structure are a result of Oregon’s current system of school finance.

\* The federal government formulates two different definitions of “poverty,” (the “poverty guidelines” published by the Department of Health & Human Services, and the “poverty threshold” published by the Census Bureau). The Measure uses HHS’s poverty guidelines, but for simplicity’s sake, this report uses the term “poverty level” to refer to these guidelines. These two current measures of poverty are quite similar and income numbers under both definitions are generally within 5 percent of each other.

† These districts are: Portland Public, David Douglas, Centennial, Parkrose, Reynolds, and Riverdale school districts.

‡ Funding levels will be determined by the collected revenue, annual cost of teachers, annual enrollment and RACC’s annual investments in nonprofit arts organizations, which is budgeted at \$3.8 million-\$4.2 million annually over the next 10 years.



Oregon’s current school funding structure is the result of two successful statewide ballot measures: Measure 5 (1990) and Measure 50 (1997). Measure 5 limits school-related property taxes to \$5 per \$1,000 of real market value. Measure 50 limits the amount by which a property’s assessed value can increase in any year. Property taxes are imposed as percentages of value, but Measure 5 imposes fixed-dollar limits. As a result, property can sometimes be subject to enough different tax levies that the total tax bill would violate Measure 5. In these cases, each taxing district must reduce its rate proportionately until the applicable limit is reached—a practice known as “compression.”<sup>7</sup>

One result of these measures was to limit the ability of school districts to raise revenue through property taxes. Accordingly, a majority of school revenues now comes from the state, not from school district tax levies. State funds now account for approximately two-thirds of Oregon’s total school funding.<sup>8</sup> Declining tax collections due to the recent recession, combined with Oregon’s enhanced sensitivity to economic downturns (due to its comparative dependency on income tax receipts), have resulted in school budgets that cannot keep pace with needs.

Witnesses testified that other communities, outside of Oregon, have established dedicated revenue streams for support of the arts. But such special taxes are either property taxes or sales taxes, neither of which is practical in Portland’s case. The restrictions imposed by Measures 5 and 50 (including compression) combine to make new property tax levies an ineffective

way of providing dependable funding. Oregonians’ longstanding resistance to a sales tax makes an arts sales tax a political nonstarter.<sup>9</sup>

## Importance of Arts and Arts Education

Measure 26-146 seeks to provide funding for two separate, but related areas: arts education\* in public schools (primarily focused on grades K-5), and arts organizations serving the community at large. Your committee believes both of these areas are important to our community’s success and are deserving of funding increases.

Incorporating arts education in the public schools is important to the educational mission of our community. Exposing children to the arts is an important component of creating educated, well-rounded, and engaged citizens. Moreover, many studies exist linking elementary-aged arts training with other forms of enhanced intelligence and performance that are highly applicable to other areas of the traditional elementary curriculum. Studies note profound consequences on the organization of the human brain resulting from musical training. Researchers who have studied this area have concluded that “music training in children results in long-term enhancement of visual-spatial, verbal, and mathematical performance.”<sup>10</sup> Your committee believes that an arts education can have a significant positive impact on children’s ability to learn in other curricular areas.

**YOUR COMMITTEE BELIEVES THAT AN ARTS EDUCATION CAN HAVE A SIGNIFICANT POSITIVE IMPACT ON CHILDREN’S ABILITY TO LEARN IN OTHER CURRICULAR AREAS.**

Witnesses also testified that the arts can be critical to certain students for other reasons. For students who are at risk of dropping out of school, the arts can serve as a spark that fires their interest and keeps them coming to school. Including art in the curriculum can also be a critical bridge to students who speak English

\* The text of the measure refers to “arts and music education,” presumably because Oregon’s teacher licensure system differentiates between music and all other arts. Your committee believes that the term “art” includes music, and unless otherwise required by context, the report uses the more general phrase “arts education.”

as a second language, for whom arts instruction is the one area of the curriculum where their emerging language skills are less essential to full participation.

**...A VIBRANT AND ACCESSIBLE ARTS COMMUNITY IN PORTLAND NOT ONLY COMPLEMENTS A STRONG CLASSROOM EDUCATION PROGRAM, BUT IS ALSO IMPORTANT TO THE ECONOMIC SUCCESS OF THE CITY.**

Finally, your committee has received testimony that student music performances represent a highly important, and in some cases the only, opportunity to draw families in to the schools and engage them with their children's school experience.<sup>11</sup>

Beyond the schoolroom, a vibrant and accessible arts community in Portland not only complements a strong classroom education program, but is also important to the economic success of the city. One study has estimated that the arts sector in Portland accounted for approximately \$253 million in direct expenditures and 8,529 full time jobs in 2010.<sup>12</sup> Anecdotal evidence suggests that Portland's reputation for a lively and creative arts sector is one of several factors that attracts young, highly skilled, and innovative workers to our community. Your committee believes that a strong and vibrant arts community in Portland helps attract talented workers and innovative companies to the region.

Despite the benefits that flow from investing in arts education and cultural institutions in our city, art instruction in our public elementary schools is dramatically underfunded compared with other communities. According to the Department of Education, 94 percent of U.S. public elementary schools offer regular music instruction by a certified teacher, and 83 percent offer visual arts instruction.<sup>13</sup> Witnesses told your committee that in Portland, 58 percent of public elementary schools offer certified music instruction and 18 percent offer art. Among the schools that would receive funds under the Measure, 12,000 elementary school children (28 percent of all students) receive no formal art or music instruction at all.<sup>14</sup>

According to data received by the committee, public spending on the arts in Portland is also significantly

lower than per capita spending in other U.S. cities with which we regularly compare ourselves, and with which we compete for economic resources. In his testimony and in the "Portland Plan," Mayor Adams shared 2009 data that supported this significant discrepancy in public funding.<sup>†</sup>

Because of inadequate funding, a generation of children in Portland is missing the skills that exposure to the arts, both in and out of the classroom, can provide. Your committee agrees that an increased citywide investment in arts education and arts organizations would be a wise long-term strategy to increase the economic vitality and quality of life in Portland.

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<sup>1</sup> Email to committee from Jessica Jarratt Miller (Aug. 22, 2012).

<sup>2</sup> Id.

<sup>3</sup> Proposed new City Code § 5.73.030(B)(2).

<sup>4</sup> Jessica Jarratt Miller, interview with committee (Aug. 22, 2012).

<sup>5</sup> Proposed City Code 5.73.070

<sup>6</sup> Portland City Council Resolution No. 36939 (Jun. 27, 2012).

<sup>7</sup> Oregon Dept. of Rev., *A Brief History of Oregon Property Taxation* (DOR Pub. 150-303-405-1) (2009), 3.

<sup>8</sup> Oregon Leg. Rev. Office, *K-12 and ESD School Finance: State School Fund Distribution* (Research Report #2-10) (Jul. 2010), 1.

<sup>9</sup> Mark Henkels, "Fiscal Policy," in *Oregon Politics and Government*, ed. Richard A. Clucas, Mark Henkels & Brent S. Steel, 213-16 (Lincoln, NE: U. of Neb. P., 2005).

<sup>10</sup> G. Schlaug, et al., "Effects of music training on the child's brain and cognitive development," *Annals of the New York Academy of Science* 1060 (Dec. 2005) 219-30.

<sup>11</sup> Sam Breyer, interview with committee (Aug. 13, 2012).

<sup>12</sup> Regional Arts & Culture Council, "Arts & Economic Prosperity IV: The Economic Impact of Nonprofit Arts & Culture Organizations and their Audiences" (2012), 8.

<sup>13</sup> Basmat Parsad & Maura Spiegelman, "A Snapshot of Arts Education," in *Public Elementary and Secondary Schools: 2009-10* (U.S. Dept. of Education Report NCES 2011-078, May 2010), tbl 1.

<sup>14</sup> Portland City Council Resolution No. 36939 (Jun. 27, 2012); Ryan Kost, "Adams sketches out art education deficiency," *Oregonian*, (Jun. 12, 2012).

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<sup>†</sup> Data presented in Mayor Adams' testimony and in the Portland Plan documentation indicate that per capita local government support for the arts in selected cities in 2009 was: Portland, \$2.47; Seattle, \$7.52; Sacramento, \$4.74; and San Diego, \$6.26. Sources are 2009 national data from Americans for the Arts, Washington, DC; testimony of Sam Adams, Mayor of Portland; and, "The Portland Plan Background," Bureau of Planning and Sustainability, City of Portland (Jul. 12, 2011).



## ARGUMENTS PRO AND CON

### Proponents of Measure 26-146 made the following arguments in support:

- Arts education is necessary to ensure strong creative leadership for future generations.
- Arts education is important on an individual level and enhances a student's success across subject areas.
- The Measure provides a more effective and dependable revenue stream than a property tax levy.
- Local arts organizations make a significant contribution to the local economy and to the quality of life of Portland residents.

### Opponents of Measure 26-146 made the following arguments in opposition:

- The Measure violates the Oregon Constitution's prohibition on head taxes.
- The ballot title of the Measure is misleading because it focuses on school funding, even though most people familiar with the Measure anticipate that roughly half the funds will go to non-school-based organizations.
- By imposing the tax on all income-earning households above the poverty level, the tax will be imposed on many residents for whom a \$35 annual tax is a significant hardship.
- The Measure leaves too many important details to be addressed in intergovernmental agreements that have not been finalized.
- Legislative bodies are elected to develop fiscal policy and create comprehensive budgets for government programs. Creating special-purpose taxes at the ballot box leads to a piecemeal revenue system and sets an undesirable precedent.
- The Measure would give the City of Portland too much of a role in matters of school curriculum.



<b>TABLE 1: ANTICIPATED ALLOCATION OF REVENUES</b>	
<b>Projected total revenue (net of administrative costs)</b>	<b>\$12,600,000</b>
Disbursements	
School districts (K-5 instruction)	\$6,342,790
Multi-district arts education coordination (details TBA)	378,000
RACC - general operating grants	3,800,000
RACC - grants for K-12 and underserved communities	2,079,210
<b>TOTAL</b>	<b>\$12,600,000</b>
Source: Dollar amounts from email to committee from Jessica Jarratt Miller (Aug. 22, 2012)	

## DISCUSSION

Measure 26-146 is a creative solution to a real problem. Although many issues are raised by the structure and purpose of the Measure, at its root it is an outgrowth of Oregon’s school finance system. Faced with increasingly unmanageable fiscal restraints, schools have had to cut budgets across the board. One area that has particularly suffered is arts education. The proposed law addresses these issues. It is also imperfect, and there are substantive problems including the following: an inadequate ballot title and summary, an unwanted adverse financial impact on those with marginal incomes, and a lack of a concrete plan regarding implementation within and among the Portland school districts.

### The Ballot Title and Summary

The Portland City Council approved a ballot title and summary of Measure 26-146 (reproduced at the beginning of this report) that focuses on the Measure’s funding of arts education in schools. However, approximately 47 percent of the revenue raised by the measure would go to RACC. The Measure allows up to 95 percent of the RACC funds to be distributed to non-school-based organizations.<sup>1</sup>

Your committee believes that the ballot title is misleading. The information presented to voters gives the impression that revenues will be used exclusively for school funding. Although the full ballot summary does mention that some funds will go to nonprofit organizations, it implies that all such funds will be for K-12 programs and underserved populations, when in fact only 5 percent of the RACC funds are required to be designated for this purpose.

While the City’s agreement with RACC does not set out explicitly the anticipated flow of funds, multiple witnesses testified that the projected budget would fund arts access grants at between \$1.5 million and \$2 million annually through the life of the fund. A projected breakdown of funds by purpose is shown in Table 1. Your committee does not object to the proposed allocation of funds, but does believe that the ballot title and summary should be more straightforward in describing the anticipated distribution.

### Oregon’s Constitutional Prohibition on Head Taxes

Article IX, Section 1a of the Oregon Constitution provides “No poll or head tax shall be levied or collected in Oregon.” Some opponents have argued that Measure 26-146 violates this prohibition, but proponents dispute this. In his August ruling on two ballot title challenges, Multnomah County Circuit Court Judge John Wittmayer remarked that Measure 26-146 is not a poll or head tax.\* However, a substantive constitutional challenge to the Measure based on Oregon’s poll tax prohibition can only be brought if the Measure is enacted by the voters, so a definitive judicial ruling will not occur prior to the election.<sup>2</sup> Your committee believes it is not within its purview to make a judgment regarding the constitutionality of the Measure. This issue, if raised postelection, should be decided by the courts.

\* *Fruits v. City Council*, No. 1207-08606 and *Clark v. City Council*, No. 1207-08635 (4th Jud. Dist. Cir. Ct.), Letter Ruling (Aug. 14, 2012), 5

## Will Measure 26-146 accomplish its goals?

Mayor Sam Adams, the chief legislative proponent of the Measure, testified that the Measure is meant to further three of the four goals of the “Portland Plan”—equity, education, and prosperity.<sup>3</sup> The Measure would promote these goals through two mechanisms: first, ensuring adequate arts instruction in all Portland elementary schools; and second, providing a stable source of public funding for local arts organizations. After considering a wide range of evidence, your committee has concerns about the implementation of the Measure, but the majority believes that these potential problems are outweighed by the pressing need for enhanced arts funding.

The tax is imposed on any income-earning adult above the federal poverty level. Using this poverty level sets a low threshold for tax liability. For example, a family of four with annual household income of \$25,000 would most likely be required to pay \$70 in tax.\* A single person earning \$12,000 would be required to pay \$35. We believe a \$35 tax is not overly burdensome for a majority of prospective taxpayers; however, your committee believes that it will be a burden on many low-income families.†

**WE BELIEVE A \$35 TAX IS NOT OVERLY BURDENSOME FOR A MAJORITY OF PROSPECTIVE TAXPAYERS; HOWEVER, YOUR COMMITTEE BELIEVES THAT IT WILL BE A BURDEN ON MANY LOW-INCOME FAMILIES.**

\* The actual amount of the tax in this scenario would depend on how many adult income earners there are in the household. However, even a non-working adult is likely to be an income earner, since any amount of income qualifies, thus a minimal amount from casual employment, gifts, or interest on a joint savings account, would qualify an adult resident as “income earning” for purposes of the tax. Therefore, it is likely that most above-poverty households with two adult residents would pay \$70, even if one of the adults is not employed full time.

† The federal poverty level equals approximately one-third of the 2012 Portland median household income. Also by way of comparison, the U.S. Department of Housing and Urban Development considers a family of four with an income of \$36,500 (which is 50 percent of the area median income) to be “very low income.”



Regarding the Measure’s objective of improving arts education funding, your committee is concerned that many details have not been addressed. The Measure leaves several critical aspects to be addressed in intergovernmental agreements (“IGAs”) between the City and the school districts, as well as an amendment to the existing contract between the City and RACC. Neither agreement has been finalized, but the City has provided a draft of the proposed school district IGA. This draft raises some concerns. For example, supporters argue that while the Measure’s funds are directed to K-5 arts education, the IGAs will ensure opportunity and instruction in the arts for all students in grades K through 12. Yet the draft IGA provision on K-12 arts education is vaguely worded and may, as a practical matter, be unenforceable. In addition, without detracting from the importance of arts education, there are concerns that the Measure will prioritize hiring art and music teachers over other more pressing needs such as reducing class sizes. However, testimony revealed that as the staffing allocation to schools is reduced in an economic downturn, the first priority in schools serving students in grades K-5 is preserving classroom teachers in each grade. Specialists like art, music, and PE teachers, as well as librarians, are more likely to be eliminated.<sup>4</sup>

While the details of the IGAs need work, your committee believes the school districts and the City will act in good faith to assure the revenue from the tax is spent in a responsible manner consistent with the intent of the Measure. The proposed audit and review process will contribute to making this work. All testimony received from school district, City, and RACC employees suggests the schools are prepared to absorb funding and apply it in a consistent manner.



Some opponents have questioned whether administrative costs will exceed the 5 percent cap required by the ballot measure. Those who appeared before the committee did not raise that concern. Furthermore, the Portland Revenue Bureau estimates administrative costs at \$525,000,<sup>5</sup> which is less than 5 percent of the anticipated revenue. In an interview with your committee, representatives of the revenue bureau confirmed these figures.<sup>6</sup>

As for the Measure's funding of RACC, your committee is concerned that the funds generated by the Measure may simply replace the existing funding that the City already provides to RACC. In 2011, the City of Portland provided \$4.4 million in funding to RACC.<sup>7</sup> The Measure is expected to generate roughly \$5.5 million for RACC.<sup>8</sup> The Measure states that the new tax funds are "in addition to existing and ongoing financial support from the City to RACC."<sup>9</sup> Your committee has reviewed correspondence between the Mayor's office and RACC setting out plans for an amendment to the existing contract, should the measure pass.<sup>10</sup> However, this provision of the Measure could be abrogated by future city councils. Over half of all City revenues are now absorbed by nondiscretionary areas such as urban renewal debt, fire and police retirement, and general debt service.<sup>11</sup> Given this pressure on discretionary funding, the City could plausibly redistribute general fund discretionary funding currently allocated to RACC to other purposes once the new revenues from the Measure are collected. Such redistribution, however, would be inconsistent

with the intent of the Measure. This concern is hypothetical; therefore your committee believes that the possibility of increased RACC funding, despite potential threats, justifies supporting Measure 26-146.

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- <sup>1</sup> Proposed new City Code § 5.73.030(B)(2).
  - <sup>2</sup> Steven J. Johansen & Stephen A. Rahe, "Interpreting Initiatives and Referendums," in *Interpreting Oregon Law*, ed. Jack Landau, p. 8-3 (Lake Oswego, OR: Oregon State Bar, 2009).
  - <sup>3</sup> The Portland Plan, available at <http://www.portlandonline.com/portlandplan/index.cfm?c=58776&a=398384>.
  - <sup>4</sup> David Wynde, interview with committee (Aug. 24, 2012).
  - <sup>5</sup> Christopher Onstott, "Arts tax tussle creates drama," *Portland Tribune*, (Jul. 18, 2012).
  - <sup>6</sup> Thomas W. Lannom & Terri Williams, interview with committee (Aug. 6, 2012).
  - <sup>7</sup> Regional Arts & Culture Council, 2011 Year in Review, 21 (\$4.4 million figure is net of \$290,000 in pass-through funds for Artists Repertory Theatre and Creative Advocacy Network).
  - <sup>8</sup> Jessica Jarratt Miller, interview with committee (Aug. 22, 2012).
  - <sup>9</sup> Proposed new City Code § 5.73.030(B)(3).
  - <sup>10</sup> Email to Jeff Hawthorne and Eloise Damrosch from Sam Adams (Jul. 24, 2012).
  - <sup>11</sup> Portland City Auditor, *A Report to our Community* (Jul. 2012), 2.



## UNANIMOUS CONCLUSIONS

### Your committee unanimously agrees on the following:

- Arts education is important on an individual level and enhances a student's success across subject areas.
- Arts education is necessary to ensure a strong creative leadership for future generations.
- Local arts organizations make a significant contribution to the local economy and quality of life.
- Oregon's current tax structure hinders adequate funding of arts and arts education. As a result of school budget reductions, arts education has suffered and Portland elementary schools do not have adequate levels of art instruction.
- By imposing the tax on all income-earning households above the poverty level, the tax will be imposed on many residents for whom a \$35 annual tax is a significant hardship.
- The ballot title of the Measure is misleading because it focuses on school funding, even though most people familiar with the Measure anticipate that roughly half the funds will go to non-school-based organizations.

## MAJORITY RECOMMENDATION

The need for additional funding of the arts and arts education is great and will have large long-term benefits for our children, our community, and our economy.

Incorporating visual arts and music education in the public school curriculum is important to the educational mission of our community. Consistent exposure to the arts contributes to producing engaged, well-rounded, and innovative citizens. Moreover, the cross-academic benefits of training in the arts have

been well documented. We have heard testimony from school districts that the arts can serve as a spark for children who would not otherwise come to school, or for whom English-language learning is a struggle. In this way the arts can engage entire school communities in the welfare and achievement of their children.

The arts are also critical to our identity as a City, and to our economic growth and success. A vibrant and accessible arts community creates jobs and very significant economic activity. Equally important, a lively arts sector is a significant draw that attracts young, highly skilled, and innovative workers and companies to our region, enriching the fabric of our city and fueling its growth. Many cities around the country understand this dynamic. To your committee, a strong arts sector is a natural signature issue for Portland.

As detailed in this report, the arts are currently underfunded to a significant degree in Portland, both in schools and in the greater community. Department of Education data tells us that the percentage of elementary schools with arts instruction is very low compared to the national average. Many children are completely unserved. In the broader community, public funding of the arts is also low compared with other cities with which we regularly compare ourselves and with whom we compete for economic resources.

As a result, Portland is missing an opportunity to build on a critical component of what makes our children succeed and our city livable and attractive to new sources of investment and prosperity. Oregon's laws leave little opportunity for arts funding through existing tax structures. Measure 26-146 provides a creative way to take near-term steps to solve a long-term problem with significant payback to our children, our citizens, and our economy.

### The majority recommends a YES vote on Measure 26-146.

*Respectfully submitted,*

Lauren Fox

Paul Millius

Chuck Mitchell

Dan Olsen

Benjamin Petersen

Rick York

Joe Lake, chair

## MINORITY RECOMMENDATION

The minority agrees with the factual conclusions of the report, but believes that three factors make Measure 26-146 unsupportable. First, the tax created by the Measure is regressive and too burdensome on low-income residents. Second, although we cannot make a conclusive determination as to the Measure’s constitutionality, there are too many concerns to warrant a “yes” vote. Finally, the Measure represents a narrow, piecemeal response to Oregon’s broken tax system, where a comprehensive change is truly needed.

### Tax Fairness

The amount of the tax represents a substantial hardship for residents with low incomes. Supporters say that the Measure safeguards against this by excluding households below the federal poverty level. The minority feels that the poverty level is too low a bar. This can be illustrated by comparing the scope of the Measure with the collection standards developed by the Internal Revenue Service (“IRS”). The IRS’s collection standards are designed to reflect reasonable amounts necessary to provide for a taxpayer’s and his or her family’s health and welfare and production of income.<sup>1</sup> The standards are also used for other purposes, such as determining a bankruptcy debtor’s disposable income.<sup>2</sup> As shown in Table 2, under established collection policies, the IRS would not use coercive collection actions (e.g., garnishment, seizure) for a four-person, Portland-area family earning under \$55,000 or a single non-car-owner earning under \$29,000, yet the measure would impose a new tax on many residents who fall below these income levels.

The City’s Revenue Bureau intends to use a private collection agency to collect unpaid accounts. The minority believes that sending collection agents after low-income residents who cannot afford to pay a \$35 tax is a regressive and inequitable tax policy which is contrary to one of the stated goals of the supporters—promoting “equity” as part of the Portland Plan. The Portland Plan defines equity as “when everyone has access to the opportunities necessary to satisfy their essential needs, advance their wellbeing and achieve their full potential.”<sup>3</sup> Mayor Adams informed your committee that the Measure would further the goal of equity by providing arts to underserved communities. While the revenues raised by the Measure may well be distributed equitably, your committee believes that

**TABLE 2: IRS COLLECTION STANDARDS - PORTLAND**

MONTHLY EXPENSE DETAIL		
	1 Person	Family of 4
Food	\$301	\$765
Housekeeping supplies	30	74
Apparel & services	86	244
Personal care	32	67
Miscellaneous	116	300
Healthcare (<65 y.o.)	60	240
Housing & utilities	1,636	2,258
Public transportation	182	-
Car ownership (1 car)	-	709
Monthly total	\$2,443	\$4,657
<b>ANNUAL</b>	<b>\$29,316</b>	<b>\$55,884</b>
<b>FEDERAL POVERTY GUIDELINE THRESHOLD</b>	<b>\$11,170</b>	<b>\$23,050</b>

Sources: IRS collection guidelines: <http://www.irs.gov/individuals/article/0,,id=96543,00.html>. Federal poverty guideline: <http://aspe.hhs.gov/poverty/12poverty.shtml/#guidelines>

the regressive nature of the tax created by the Measure is inequitable and cannot be overlooked.

### Constitutional Issues

The minority also believes that the Measure’s constitutionality should be considered when formulating a recommendation. In July, two Portland residents filed petitions in Multnomah County Circuit Court challenging the Measure’s ballot title.<sup>4</sup> As part of these challenges, the petitioners argued that the ballot title should identify the Measure as creating a poll tax. In an August 14 ruling, the court summarily remarked that “[t]he proposed tax at issue here is not a head tax or a poll tax because it is not assessed per capita.”<sup>5</sup> The minority does not believe the issue was ripe for decision at that time. Furthermore, based on the history underlying Article IX, Section 1a of the Oregon Constitution, it is not at all clear that the court’s conclusion is correct. At the same time, the minority believes that the purpose of this report is to consider policy issues without performing an extensive legal analysis. Accordingly, we do not express a final opinion on the Measure’s constitutionality but do note that this matter is open to debate and will almost

certainly be considered by a higher court if the Measure passes. Although supporters of the Measure claim that the city considered constitutional issues when creating the Measure, no analysis was provided to the committee. The minority thinks that the Measure’s questionable constitutionality, coupled with the other attendant problems discussed in this report, is grounds for recommending a “no” vote.

### Failure to Address Fundamental Problems

The Measure is intended to address problems caused by the failure of the state government to provide adequate funding for education. The root cause of this failure is the significant and negative impacts of Measures 5 and 50. The minority believes that the Measure is merely a “band-aid” fix that cannot adequately address the larger dysfunctions of our tax system. In addition, the Measure prioritizes arts education over other pressing school-funding needs. This may well be appropriate and necessary; however, this prioritization was formulated by City officials and arts advocates, not by educators and school professionals. While it is understandable that the school districts are willing to accept the revenue from such a tax, it is a poor substitute for a reasoned decision on the matter.

### Conclusion

The aforementioned concerns regarding tax fairness and the constitutionality of Measure 26-146, combined with the unresolved implementation questions noted in the discussion, make the Measure too uncertain to support.

As evidenced by your committee’s unanimous conclusions, even supporters of the Measure acknowledge that there are flaws. In the world of lawmaking, legislators often argue in favor of imperfect measures by paraphrasing Voltaire’s aphorism that the perfect should not be the enemy of the good. The majority appears to use a similar principle when arguing that the Measure, despite its imperfect means, is worth supporting because of the importance of its ends (i.e., promoting the arts). The minority believes that while no measure is ever perfect, this particular Measure is not “good.” The problems and unanswered questions pertaining to the Measure are so numerous that its supporters are essentially asking voters to take a leap of faith. The minority does not think that such a leap is justified in this case.



### The minority recommends a NO vote on Measure 26-146.

*Respectfully submitted,*

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Zoe Smolen

Rhett Tatum

Erica Thatcher

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<sup>1</sup> Internal Revenue Manual § 5.15.1.7(1).

<sup>2</sup> 11 U.S.C. § 707(b)(2)(A).

<sup>3</sup> The Portland Plan, 18.

<sup>4</sup> *Fruits v. City Council*, No. 1207-08606 and *Clark v. City Council*, No. 1207-08635 (4th Jud. Dist. Cir. Ct., filed Jul. 9, 2012 and Jul. 10, 2012, respectively).

<sup>5</sup> *Id.*, Letter Ruling (Aug. 14, 2012), 5.

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