

## **Multnomah County Measure 26-238**

**Official Title:** Establishes residential tenant resources program, eviction representation, capital gains tax

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

### **Financial Impact:**

Proponents predict the new tax will raise \$12 million to \$15 million per year; there is no estimate for the cost of the proposed program. The tax of .75 percent (.0075 x income amount) applies to capital gains income of all County residents. Businesses are not subject to the tax. The tax rate may be increased or decreased based on the County's annual reports. The tax would be received, collected, and enforced by the County Chief Financial Officer or a public agency. The County must adopt administrative rules to implement the tax.

### **Probable Results of a Yes Vote:**

The County will use proceeds from the tax to establish a new program to provide free legal services to County residents facing eviction. The program will be operated by a new Tenant Resource Office within the County Department of Human Services. This new office will also maintain a countywide registry of residential rental properties and prepare annual reports measuring outcomes. Residential property landlords will be required to provide written notification about the new free legal representation program when serving an individual with an eviction notice.

### **Probable Results of a No Vote:**

A No Vote will maintain current tax laws. No new eviction legal representation program or Tenant Resource Office will be established.

### **Background:**

In 2022, over 7,500 eviction cases were filed in Multnomah County Court. This number does not include evictions that never reached the court. For example, it does not include the number of tenants who moved because of the threat of eviction or because of receiving an eviction notice (legal or not) before they received a court summons. There is no law guaranteeing legal representation for tenants in eviction court, as there is for defendants in criminal court cases. Tenants without a knowledge of their own rights or the eviction process and legal system are at a disadvantage in negotiations with landlords and in legal proceedings. In 2022 the Oregon Law Center estimated about 6 percent of tenants facing eviction in Multnomah County were represented by lawyers, while about 50 percent of landlords in those cases had lawyers to argue their cases.

Mirroring trends across the country, evictions in Multnomah County disproportionately affect Black, Indigenous and people of color, households led by women, families with children, and queer or trans renters. State data from August, September and October of 2022 show that

eviction filings surpassed pre-pandemic levels. Evictions are also projected to increase dramatically now that State COVID-19 tenant protections have expired.

A 2021 report by Portland State University Homelessness Research and Action Collaborative estimates between 25 percent and 62 percent of evictions lead to shelter needs, with many of these evictions leading directly to unsheltered homelessness. The County is already in the midst of an unprecedented housing crisis, and the predicted increase in evictions will likely add to the number of unhoused individuals.

Since February 2019, with the implementation of Senate Bill 608, most residential property landlords must provide a reason (such as a lease violation) before they can evict Oregon renters who have lived in their homes for more than a year, although there are a few exceptions to this rule. If a no-cause eviction is allowed, tenants should receive 90-days' notice and may qualify for relocation assistance. In the first year of tenancy, tenants must receive 30-days' notice for a no-cause eviction (90 days in the City of Portland) and may qualify for relocation assistance. On the other hand, if rent is overdue for more than seven days, residential property landlords need to provide 72-hours notice before tenants must pay or move.

In 2021, Multnomah County and the City of Portland allocated \$6.2 million (part of a \$64 million federal aid package) to fund eviction legal defense programs for low-income tenants. Currently, the City of Portland's Eviction Legal Defense Program (ELDP) serves tenants facing eviction. To qualify for this service, tenants must have received a termination notice that has not been filed, lost a housing subsidy, or be involved in an eviction case. These tenants must also rent within City limits and earn up to 80 percent of the area median income, or \$85,200 for a family of four. Multnomah County also continues to help fund the Oregon Law Center's Eviction Defense Project and uses money from the voter-approved Metro Supportive Housing Services (SHS) measure to support tenants. According to Metro, SHS dollars, in addition to other funding, allowed Multnomah County to help 9348 people avoid eviction between July 2021 and December 2022. The County's FY 2022 Annual SHS Report notes, "SHS funds supported 537 households who received eviction notices, by providing these households with legal services through the Oregon Law Center."

This measure proposes a new adjustable 0.75 percent tax on "net realized capital gains" for most County residents who have capital gains income. A net realized capital gain is the income earned by the sale of an asset (i.e. the difference between the sale price and the original purchase price, or simply put, the profit). Most capital gains are created by the sale of financial assets such as stocks and bonds; however, any asset held for more than one year and sold at a profit may be taxed, including businesses, property, equipment, antiques, and art. Capital gains taxes are calculated differently at the federal and state level. Federally, capital gains are taxed separately at a lower level than other kinds of income, such as wages, and the rate varies based on income, with lower-income taxpayers paying 0 percent. At the state level, capital gains are included as part of one's overall income and are taxed at a rate ranging from 5 to 9.9 percent, based on a taxpayer's income.

*(Measure Summary on next page)*

**Measure Summary:**

This measure would establish a new program to provide free lawyers to represent persons facing eviction from their homes in Multnomah County. The court cases may include appeals to maintain public housing assistance payments. Any person, regardless of their income or immigration status, who is facing eviction from a residential property—defined in the measure as “including but not limited to any building, structure, land, rented space, or transportable dwelling unit, or any part thereof, used for a residence”—could seek these free legal services.

The program would be managed by a new Tenant Resource Office (TRO) within the County Department of Human Services. The County would be required to contract with at least five nonprofit law firms or community-based organizations to provide lawyers to represent renters who are facing evictions. The legal services might include lawsuits to recover attorney fees, costs, and prevailing party fees when applicable. The County must also establish and administer rules for awarding the program’s funds. In addition to legal representation, the funds could provide emergency rental assistance, payment of legal costs, or money awarded to residential property landlords if they win in a case. Finally, the new TRO will provide education about eviction services and related programs for tenants, maintain a countywide registry of residential rental properties, and prepare annual reports on the program’s performance.

Residential property landlords would be required to notify tenants in writing about the TRO and free legal representation program when serving those tenants with an eviction notice. Failure to do so would require postponing the first court appearance for at least seven days to allow individuals time to find a lawyer. Eviction cases must also be postponed until a lawyer can be appointed, unless the tenant signs a waiver.

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

*(Supporters’ and Opponents’ Statements on next page.)*

### **Supporters Say:**

- Evictions are very costly to all of society in terms of downstream community costs for shelters, medical care, foster care, law enforcement, etc. Multnomah County estimates evictions leading to homelessness cost the County \$83 million annually. Dedicating funds to earlier interventions, such as providing legal representation, will prevent evictions and keep people housed while saving the County money in the long run.
- Eviction courts are stacked against tenants from the outset. Research published in 2022 by the University of North Carolina at Chapel Hill found that the laws that structure eviction courts overwhelmingly benefit the landlord and ultimately encourage eviction.
- The 18 jurisdictions (3 states and 15 cities) who have already employed the right to legal counsel in eviction cases have seen reduced evictions and reduced eviction filings. (New York City saw a 40 percent reduction in filings, and 84 percent of households with legal representation were able to stay in their homes).
- Multnomah County is already in the middle of an unprecedented housing crisis, and landlords can legally raise rents up to 14.6 percent this year, likely exacerbating the crisis and leading to more evictions.
- Under the federal and state capital gains tax code, this tax would target the top 5 percent of wealth holders in the community (who took home nearly 85 percent of all capital gains income in 2020).
- This tax is easy to forecast and collect since taxpayers already report capital gains, and it helps offset the lower, preferential federal tax rate on capital gains relative to earned income.

### **Opponents Say:**

- Multnomah County already has one of the highest marginal income tax rates in the United States. Adding a new tax will make it more difficult to attract and retain employers, higher-income taxpayers, and investment to our community.
- 77 percent of evictions in Multnomah County are due to non-payment, so this money could be better spent on programs like rent assistance.
- This program is redundant since both the City of Portland and Multnomah County already fund legal services for tenants under threat of eviction. Metro's homelessness services measure that voters approved in 2020 (expected to generate \$250 million a year through 2030 with a tax on higher income earners and businesses with gross profits over \$5 million) is already being used to provide rent assistance and legal support to tenants facing eviction.
- This measure pushes through yet another tax without actual mechanisms for implementation in place and without a full understanding of the full costs, including the cost to collect the tax.
- Capital gains taxes are volatile and not a stable source of revenue for a support program like this; there is also no upper limit to the adjustable tax rate.
- This program will postpone evictions until a lawyer can be identified; Multnomah County currently does not have enough public defense lawyers, and this will just further strain the system.
- The measure does not require that a person has a legal right to occupy a residence—like a lease or rental agreement—to obtain legal representation through this program.