

TO: City Council for November 7, 2016
FROM: Paul Bilotta, Community Development Director *PB*
DATE: October 31, 2016
THROUGH: Mark W. Shepard, P.E., City Manager *MWS*
SUBJECT: Construction Excise Tax Ordinance and Resolution



Action Requested:

The Housing Development Task Force (HDTF) recommends the City Council approve an ordinance to implement an Affordable Housing Construction Excise Tax (CET). To fully implement this change, the Council should also pass a resolution setting the tax rates for the CET.

Discussion:

On October 17, 2016, the City Council considered the final package of housing-related recommendations from the City's HDTF. Within that package was a recommendation to establish developer incentives to create affordable housing, and to implement a Construction Excise Tax to provide those incentives. The incentives provided by the CET would operate on a voluntary basis, rather than on a mandatory basis as would also be allowed under enabling legislation, the 2016 Oregon Legislature's Senate Bill 1533.

Projected CET Revenues

Revenues from a Corvallis construction excise tax would be generated from two types of development: from residential development that creates new or expands existing living space, and from commercial and industrial development that results in a new structure or adds square footage in an existing structure. SB 1533 fixes the CET rate on the value of residential development at one percent. The HDTF has recommended a one and one-half percent CET rate on the value of commercial and industrial development. Applying those rates to an average of the three most recent years' levels of development activity yields a projection of CET revenues totaling approximately \$660,000 annually. This figure is based on projected average revenue from residential development at \$460,000 a year, and projected average revenue from commercial and industrial development at \$200,000 a year.

CET revenues will be limited by exemptions for certain development under the provisions of SB 1533. These exemptions include properties owned or developed by public entities such as Oregon State University, the Corvallis School District, and other governmental bodies; properties owned or developed by not-for-profit entities as affordable housing with a secured 60-year commitment to affordability; public or private hospital improvements; improvements to religious facilities; private school improvements; and agricultural buildings. The HDTF has also recommended exempting affordable housing construction that is being assisted with CET proceeds.

Allowed and Proposed Uses of CET Revenues

SB 1533 sets specific restrictions on the uses to which CET revenues may be applied. For CET revenues generated by both residential and commercial/industrial development, four percent of the revenue collected may be retained by the entity collecting the taxes to offset costs incurred for collection. Allowed uses of the remaining revenues differ between residential development and commercial/industrial development. The allowed and proposed uses are included in the tables that follow.

Table 1: Residential Development-based CET Revenues

Of the balance after retaining 4% for administration	Allowed/required uses	Proposed uses
15%	Remit to Oregon Housing and Community Services to support home ownership programs.	As required.
50%	Use to fund mandatory or voluntary developer incentives for affordable housing.	As allowed; use to fund voluntary developer incentives to create housing affordable to lower-income households than SB 1533 targets (<80% of average median income (AMI) for home owner programs; <60% AMI for renter programs).
35%	Use to fund incentives or programs related to affordable housing.	As allowed; use to fund incentives, programs, and program administration.

Table 2: Commercial/Industrial-based CET Revenues

Of the balance after retaining 4% for administration	Allowed/required uses	Proposed uses
50%	Use to fund programs related to housing.	As allowed; use to fund incentives, programs, and program administration.
50%	Use for purposes established at the discretion of the jurisdiction.	As allowed; use to fund incentives, programs, and program administration.

Applying these breakout percentage rates to the \$660,000 in projected/average annual CET revenues explained above, uses would be as follows.

Table 3: Uses of CET Revenues

Use of CET revenues	Amount of CET revenues
Retained by Development Services for costs incurred to collect the CET.	\$ 26,000
Remitted to Oregon Housing and Community Services Department.	\$ 66,000
Applied as developer incentives for housing voluntarily built for renters below 60% AMI and owners below 80% AMI.	\$220,000
Applied to affordable housing incentives, programs, and program administration.	\$348,000
Total	\$660,000

If the City applies the CET as outlined in table 3 above, CET revenues averaging approximately \$568,000 annually could be used to support affordable housing development and programs.

Affordable Housing Program Development

In its final report to the City Council, the HDTF recommended the City’s Housing and Community Development Advisory Board (HCDAB) be assigned responsibility for developing the allocation methodologies that will be applied to the affordable housing programs, projects, and activities to be funded with CET revenues. The HCDAB is prepared to begin work on this task before the end of 2016 and will bring its recommendations to the Council prior to the end of FY 16-17. Under this schedule, CET revenues would be collected but not expended during FY 16-17, and then awarded to qualifying affordable housing activities under the HCDAB’s Council-approved methodologies beginning in FY 17-18. For purposes of

effectiveness and efficiency it is likely project and activity proposals for CET awards will be considered concurrently with proposals from the City's Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs.

Recommendation:

Staff recommend that the City Council:

1. Conduct a public hearing to receive input regarding the adoption and implementation of the Affordable Housing Construction Excise Tax ordinance that is attached as Exhibits 1 and 1A;
2. If the Council's decision is to move forward with the CET, adopt the attached ordinance; and
3. Following that adoption, pass the resolution attached as Exhibit 2 in order to establish the rates at which the CET will be applied to future residential, commercial and industrial construction.

If the Council does not wish to move forward with the CET, no further consideration of the HDTF's recommended action for this item will be required.

Budget Impact:

The projected budget impacts of adopting the Affordable Housing Construction Excise Tax are summarized in tables 1 through 3 above. In addition to providing the City with additional resources to incentivize the development of affordable housing, CET revenues may also be used to support the City's operation of its affordable housing program and planning activities. Using CET in these ways would help offset the Community Development Revolving Fund's current annual operating deficit that is the result of steadily declining CDBG and HOME program awards.

VPB:prj

Attachments: Attachment A – Affordable Housing Construction Excise Tax Ordinance
Attachment B – Resolution Establishing CET Rates

ORDINANCE 2016-___

AN ORDINANCE RELATING TO A CONSTRUCTION EXCISE TAX FOR AFFORDABLE HOUSING ENACTING NEW MUNICIPAL CODE CHAPTER 8.16, "AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX"

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

Section 1. Municipal Code Chapter 8.16 is hereby enacted as fully set out in Exhibit A to this Ordinance, which is attached and incorporated as part of this ordinance.

Section 2. Emergency. Because prompt and continuous funding of affordable housing programs is necessary for the peace, health and safety of the people of the City of Corvallis and the surrounding area, the City Council declares an emergency exists, and this ordinance shall be effective upon its passage by the Council.

PASSED by the City Council this _____ day of _____ 2016

APPROVED by the Mayor this _____ day of _____ 2016

EFFECTIVE this _____ day of _____ 2016

Mayor

ATTEST:

City Recorder

ORDINANCE 2016 - _____

Exhibit A

Chapter 8.16

AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

Section 8.16.010 Purpose.

This Chapter establishes a construction excise tax on commercial and residential improvements to provide funding for affordable housing in the City. Chapter 8.16 of the Corvallis Municipal Code shall be known as the affordable housing construction excise tax.

Section 8.16.020 Definitions.

As used in this Chapter:

- A. "Area median income" means Benton County median household income by household size as defined by the United States Department of Housing and Urban Development and published periodically.
- B. "Commercial" means designed or intended to be used, or actually used, for other than residential purposes.
- C. "Construct" or "construction" means erecting, constructing, enlarging, altering, repairing, improving, or converting any building or structure for which the issuance of a building permit is required by Oregon law.
- D. "Improvement" means a permanent addition to, or modification of, real property resulting in a new structure, additional square footage to an existing structure, or addition of living space to an existing structure.
- E. "Net revenue" means revenues remaining after the administrative fees described in section 8.16.120(A) are deducted from the total construction excise tax collected.
- F. "Structure" means something constructed or built and having a fixed base on, or fixed to, the ground or to another structure.
- G. "Value of improvement" means the total value of the improvement as determined in the process of issuance of the building permit.

Section 8.16.030 Administration and Enforcement Authority.

The City Manager is responsible for the administration of this Chapter.

Section 8.16.040 Imposition of Tax.

The City Council shall set the percentage rate of the construction excise tax by resolution, in an amount not to exceed that permitted by state law.

- A. Each person who applies to construct a commercial or industrial improvement in the City shall pay a commercial construction excise tax, in an amount based on a percentage of the full value of the improvement, as set by the City Council through resolution.
- B. Each person who applies to construct a residential improvement in the City shall pay a residential construction excise tax in an amount based on a percentage of the full value of the improvement, as set by the City Council through a resolution.
- C. The construction excise tax shall be due and payable, and must be paid, prior to the issuance of any building permit as required by ORS 320.189 as amended by SB 1533 Section 8(4) [2016].

Section 8.16.050 Exemptions.

- A. The construction excise tax shall not apply to any of the following improvements:
 - 1. Private school improvements.
 - 2. Public improvements as defined in ORS 279A.010.
 - 3. Public or private hospital improvements.
 - 4. Improvements to religious facilities primarily used for worship or education associated with worship.
 - 5. Agricultural buildings, as defined in ORS 455.315(2)(1).
 - 6. Facilities operated by a not-for-profit corporation and that are:
 - a. Long term care facilities, as defined in ORS 442.015.
 - b. Residential care facilities, as defined in ORS 443.400.
 - c. Continuing care retirement communities, as defined in ORS 101.020.
 - 7. Any other exemption required by Oregon statute.
 - 8. Any improvement funded by Construction Excise Tax proceeds, or other dedicated affordable housing funding through the City of Corvallis Community Development Block Grant or HOME Investment Partnerships programs, limited to the amount of the City's investment in the improvement.
- B. The Development Services Division may require any person seeking an exemption to demonstrate that the improvements are eligible for an exemption and to establish all facts necessary to support the exemption.

Section 8.16.060 Failure to Pay.

The Development Services Division may not issue a building permit for construction of improvements to any person who has failed to pay the applicable construction excise tax.

Section 8.16.070 Statement of Full Value of Improvement Required.

It is a violation of this Chapter for any person to fail to state, or to understate, the full value of improvements to be constructed in the City in connection with an application for a building permit.

Section 8.16.080 Interest and Penalties for Failure to Comply.

- A. All amounts of construction excise tax not paid when due shall bear interest on the entire unpaid amount at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date to the 15th day of the month following the date of the payment. Interest amounts may not be waived.
- B. A penalty of five percent of the underpayment of construction excise tax shall apply to:
 - 1. Any underpayment due to the improvements constructed initially failing, or later ceasing, to be exempt affordable housing under Section 8.16.050, prior to expiration of the applicable income restriction period.
 - 2. Any underpayment involving a failure to state or an understatement of the full value of improvements.
- C. If not paid within ten days after billing all interest and penalties shall merge with and become part of the construction excise tax required to be paid under this Chapter. From the point of merger, the previously assessed interest and penalty become part of the tax due for calculation of interest and penalty for subsequent periods.

Section 8.16.090 Enforcement by Civil Action.

The construction excise tax, and any assessed interest and penalties due and owing under this Chapter constitutes a debt owing to the City by the person liable for the tax as set forth in Section 8.16.040.

Section 8.16.100 Refunds.

- A. The City shall issue a refund to any person who has paid a construction excise tax the amount of the tax actually paid:
 - 1. If the taxpayer establishes that the tax was paid for improvements that were otherwise eligible for an exemption under section 8.16.050.
 - 2. If the taxpayer establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the Development Services Division.
 - 3. Upon a determination by the City Manager or the Council that the amount of any construction excise tax, penalty, or interest has been erroneously collected or paid to the City under this Chapter.
- B. The City Manager shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Any request for refund must be submitted within three years from the date of payment.

C. Denial of a refund claim may be appealed as provided in Section 8.16.110.

Section 8.16.110 Appeals.

- A. Any written determination issued by the Development Services Division applying the provisions of this Chapter pursuant to intergovernmental agreement, believed to be in error, may be reviewed by the City Manager if the recipient requests review in writing delivered to the City Manager within ten days after receipt of the written determination together with all documentation required to support the request.
- B. Any written determination from the City Manager applying the provisions of this Chapter regarding liability for payment of construction excise taxes may be appealed to the Council as provided in section 3.08.180 of the City Code.
- C. The filing of any appeal shall not stay the effectiveness of the written determination unless the Council so directs.

Section 8.16.120 Dedication of Revenue.

- A. Net revenues from the construction excise tax shall be deposited into the General Fund, then used or transferred in a manner required to meet the obligations set out for these revenues under state law.

(Ord. 20YY-## § 1, MO/DY/YYYY)

RESOLUTION 2016-_____

A RESOLUTION SETTING THE TAX RATE FOR A CONSTRUCTION EXCISE TAX AS RELATED TO MUNICIPAL CODE SECTION 8.16.040, "IMPOSITION OF TAX."

Minutes of the _____, Corvallis City Council meeting, continued.

A resolution submitted by Councilor _____.

WHEREAS, Ordinance 2016-___ enacted Chapter 8.16 of the Corvallis Municipal Code; and

WHEREAS Section 8.16.040 requires that the City Council establish by resolution the percentage rate of the excise tax to be levied on the value of commercial, industrial, and residential improvements to fund affordable housing; and

WHEREAS Oregon law provides that the local government imposing the CET may retain four percent of CET revenues as a fee for administering the tax. After this fee, the residential CET revenues are to be distributed as follows:

- 50 percent to developer incentives as set out in Section 1 of the bill
- 15 percent to Oregon Housing and Community Services Department to fund homeownership programs that provide down payment assistance
- 35 percent for affordable housing programs and incentives as defined by the local jurisdiction; and

WHEREAS, for a CET imposed on commercial or industrial development, 50 percent of revenues after the administrative fee must be expended on programs related to housing; and

WHEREAS, Oregon law provides that the rate of the construction excise tax on residential construction may be one percent of the permit value of the construction, but imposes no limit on the rate of the construction excise tax on commercial and industrial construction.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CORVALLIS RESOLVES that the rate of taxation under Corvallis Municipal Code Section 8.16.040 shall be _____ percent for residential construction and _____ percent for commercial and industrial construction.

Councilor

Upon motion duly made and seconded, the foregoing resolution was adopted, and the Mayor thereupon declared said resolution to be adopted.