

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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Action: An Ordinance Concerning Imposition of a Construction Excise Tax on Commercial and Residential Improvements and Adding Sections 3.730, 3.732, 3.734, 3.736, 3.738, 3.740, 3.742, 3.744, 3.746 and 3.748 to the Eugene Code, 1971.

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Meeting Date: April 8, 2019  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 3  
Staff Contact: Denny Braud  
Contact Telephone Number: 541-682-8817

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## ISSUE STATEMENT

Housing affordability and availability is a long-standing and growing problem in Eugene. In response to multiple work sessions on the topic, council directed staff in May 2018 to implement a six-month process to identify potential tools and strategies available to the City to address housing affordability, availability, and diversity for all income levels. A key tenet of the direction was to include broad stakeholder engagement in the process. Staff summarized the community engagement process, the outcomes from that process, and recommended next steps for council during work sessions in December 2018 and January 2019.

On January 14, 2019, council passed a motion directing the city manager to hold a public hearing on an ordinance that establishes a Construction Excise Tax as follows:

- i. 0.33 percent tax rate effective July 1, 2019.
- ii. 0.50 percent tax rate effective July 1, 2020.
- iii. 1 percent tax rate effective July 1, 2021.
- iv. CET rate would apply to residential and commercial types of construction, consistent with state statute.
- v. In addition to state-mandated exemptions, the following would be exempted from the CET: Affordable housing projects, projects receiving a Multi-Unit Property Tax Exemption, and houses priced at less than \$250,000.
- vi. Establish an advisory committee to recommend CET allocations.
- vii. The total CET imposed on any single or multi-phase project would be capped at \$1,000,000.
- viii. During the first two years (July 2019 – June 30, 2021), the City will offset the cost of the CET paid by an applicant by an equivalent reduction in Systems Development Charges.

- ix. During the first two years (July 2019 – June 30, 2021), designate City funds, equivalent to the reduction in SDCs, to the appropriate SDC fund.
- x. Designate \$500,000 per year of City funds to the Affordable Housing Fund.
- xi. Council review of program every two years beginning in 2021.

On February 19, 2019, council held a public hearing on an ordinance containing the eleven items listed above. To more accurately reflect the intent that the CET would be entirely offset during the first two years of the CET's implementation, Section 2 of the February 19 ordinance has been revised as follows: "If the amount of the construction excise tax the person paid pursuant to Section 3.732 exceeds the total amount of City-imposed SDCs owed, ~~the person will not be refunded the excess construction excise tax paid~~ **the excess construction excise tax paid will be subtracted from a permit fee the person owes.**" Also, to be consistent with how SDC funds are proposed to be kept whole, Section 3 of the February 19 ordinance has been revised to add a second sentence that states: "Similarly, if any amount is subtracted from a permit fee, the City intends to make the permit fund whole by paying with other City funds the permit fee not paid pursuant to Section 2 of this Ordinance." The ordinance attached as Attachment A to this AIS reflects these two changes to the February 19 ordinance.

Regarding implementation of Sections 2 and 3 of the ordinance, it is anticipated that the system development charge for each system (i.e., parks, stormwater, transportation and wastewater, excluding the regional portion of wastewater SDC) will be reduced by a pro-rata share of the CET. For example, if the CET paid by a person amounts to 80 percent of the total city-imposed SDCs owed by that person, for the period of July 1, 2019, through June 30, 2021, the SDC owed for each system will be reduced by 80 percent.

## **BACKGROUND**

In 2016, the State of Oregon passed SB 1533, which enabled local jurisdictions to adopt a CET to support the development of affordable housing (see Attachment B). A CET is a one-time tax imposed on new construction, where an established tax rate (percentage) is multiplied by the permit valuation of the construction permit. The CET is assessed at the time building permits are issued.

SB 1533 allows up to a 1 percent tax for residential construction but sets no limit on a tax rate for commercial construction. To date, at least nine jurisdictions in Oregon have adopted a CET ranging from .33 percent (Bend and Medford) to 1.5 percent (Corvallis, commercial only). A CET would apply to the costs of improvements to residential property that result in a new residential structure or a remodel that adds living space and on improvements to commercial and industrial real property that results in a new structure or additional square footage.

Based on Eugene residential and commercial construction activity over the two year period from April 2016-2018, it was estimated that a 0.33 percent CET would generate almost \$1.0 million per year, a 0.5 percent CET would generate roughly \$1.5 million per year, and a 1 percent CET nearly \$3 million per year.

## **PREVIOUS COUNCIL DIRECTION**

[April 12, 2017 Work Session](#) – City Council received an introductory presentation on SB 1533 and directed staff to pursue development of policy options for a CET in collaboration with the Housing Policy Board.

[December 13, 2017 Work Session](#) – City Council reviewed a set of recommendations from the Housing Policy Board for implementation of a CET. Council directed staff to continue engaging community stakeholders on implementation of a CET.

[April 9, 2018 Work Session](#) – City Council continued discussion of options for a CET and directed staff to return with a process for council consideration that would identify existing barriers to housing affordability, availability and diversity of type.

[January 14, 2019 Council Meeting](#) – City Council directed City staff to create a draft CET ordinance and to schedule a public hearing.

[February 19, 2019 Public Hearing](#) – Thirty four people testified at the public hearing on an ordinance imposing a construction excise tax on residential and commercial improvements.

## **COUNCIL OPTIONS**

1. Adopt the ordinance as proposed.
2. Adopt the ordinance with modifications as determined by the City Council.
3. Take no action on the ordinance.

## **CITY MANAGER'S RECOMMENDATION**

City Manager has no recommendation at this time.

## **MOTION**

Move to adopt Council Bill 5202, an ordinance concerning imposition of a construction excise tax on commercial and residential improvements.

## **ATTACHMENTS**

- A. An Ordinance Concerning Imposition of a Construction Excise Tax on Commercial and Residential Improvements and Adding Sections 3.730, 3.732, 3.734, 3.736, 3.738, 3.740, 3.742, 3.744, 3.746 and 3.748 to the Eugene Code, 1971.
- B. SB 1533

**FOR MORE INFORMATION**

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING IMPOSITION OF A CONSTRUCTION EXCISE TAX ON COMMERCIAL AND RESIDENTIAL IMPROVEMENTS AND ADDING SECTIONS 3.730, 3.732, 3.734, 3.736, 3.738, 3.740, 3.742, 3.744, 3.746 AND 3.748 TO THE EUGENE CODE, 1971.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Sections 3.730, 3.732, 3.734, 3.736, 3.738, 3.740, 3.742, 3.744, 3.746 and 3.748 of the Eugene Code, 1971, are added to provide as follows:

**Construction Excise Tax**

**3.730** **Construction Excise Tax - Definitions.** The following words and phrases as used in 3.732, 3.734, 3.736, 3.738, 3.740, 3.742, 3.744, 3.746 and 3.748 of this code shall have the following meanings:

**Area median income.** Lane County median household income by household size as defined by the United States Department of Housing and Urban Development and published periodically.

**City Manager.** The city manager or the city manager's designee.

**Commercial.** Designed or intended to be used, or actually used, for other than residential purposes.

**Construct or construction.** 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.

**Improvement.** 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.

**Net revenue.** Revenues remaining after the administrative fees described in section 3.738 of this code are deducted from the total construction excise tax collected.

**Residential.** Designed or intended to be used, or actually used, for residential purposes including any residential structure, dwelling, or dwelling unit.

**Structure.** Something constructed or built and having a fixed base on, or fixed to, the ground or to another structure.

**Value of improvement.** The total value of the improvement as determined in the process of issuance of the building permit.

**3.732** **Construction Excise Tax – Tax Imposed.**

- (1) Each person who applies to construct a commercial improvement in the city shall pay a commercial construction excise tax in the following amounts:
  - (a) From July 1, 2019 through June 30, 2020: 0.33 percent of the value of the improvement.
  - (b) From July 1, 2020 through June 30, 2021: 0.50 percent of the value of the improvement.
  - (c) Beginning July 1, 2021: 1 percent of the value of the improvement.
- (2) Each person who applies to construct a residential improvement in the city shall pay a residential construction excise tax in the following amounts:
  - (a) From July 1, 2019 through June 30, 2020: 0.33 percent of the value of the improvement.
  - (b) From July 1, 2020 through June 30, 2021: 0.50 percent of the value of the improvement.
  - (c) Beginning July 1, 2021: 1 percent of the value of the improvement.
- (3) The total construction excise tax imposed by subsection (1) and (2) of this section shall not exceed \$1,000,000 for any single or multi-phased development project.
- (4) The construction excise tax shall be due and payable prior to the issuance of any building permit.

**3.734****Construction Excise Tax - Exemptions.**

- (1) The construction excise tax shall not apply to any of the following improvements:
  - (a) Private school improvements;
  - (b) Public improvements as defined in ORS 279A.010;
  - (c) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the city of Eugene, for a period of at least 60 years following the date of construction of the residential housing;
  - (d) Public or private hospital improvements;
  - (e) Improvements to religious facilities primarily used for worship or education associated with worship;
  - (f) Agricultural buildings, as defined in ORS 455.315(2)(a);
  - (g) Facilities that are operated by a not-for-profit corporation and that are:
    1. Long term care facilities, as defined in ORS 442.015;
    2. Residential care facilities, as defined in ORS 443.400; or
    3. Continuing care retirement communities, as defined in ORS 101.020.
  - (h) Residential dwellings sold for \$250,000 or less;
  - (i) Housing for low-income persons that is exempt from systems development charges pursuant to section 7.725(c) of this code; and,
  - (j) Projects granted a multi-unit property tax exemption (MUPTTE) by the city.
- (2) Any person seeking an exemption may be required to demonstrate that the improvements are eligible for an exemption and to establish all facts necessary to support the exemption.

**3.736****Construction Excise Tax – Refunds.**

- (1) A construction excise tax may be refunded to a person that:
  - (a) Establishes that the tax was paid for improvements that were otherwise eligible for an exemption under section 3.734 of this code; or
  - (b) Establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the city; or

- (c) Establishes that the tax had been erroneously collected.
- (2) A request for a refund shall be made within three years from the date of payment of the construction excise tax on forms provided by the city manager. Denial of a request for a refund may be appealed as provided for in section 3.744 of this code.

**3.738 Construction Excise Tax – Allocation.**

- (1) Revenues from the construction excise tax will be allocated to fund programs, incentives, and services related to the housing of households earning 100 percent of area medium income and below, and in accordance with state law.
- (2) Up to 4 percent of the taxes collected may be retained by the city for payment toward the city's administrative expenses related to collection and distribution of the construction excise tax.

**3.740 Construction Excise Tax – Interest and Penalties.** In addition to assessing any civil penalties, if the city manager determines that a person has failed to pay to the city all or any part of the construction excise tax due under section 3.732 of this code, interest shall be due on the entire unpaid amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the tax.

**3.742 Construction Excise Tax – Implementing Rules.** The city manager may adopt administrative rules pursuant to section 2.019 of this code for implementation of sections 3.732, 3.734, 3.736, 3.738, 3.740, 3.744, 3.746 and 3.748 of this code, the billing and collection of the construction excise tax due thereunder, and enforcement of those provisions.

**3.744 Construction Excise Tax – Appeal.** Any person aggrieved by any decision under this code may appeal the decision in the manner provided in section 2.021 of this code. The appeal shall be heard and determined as provided in section 2.021 of this code.

**3.746 Construction Excise Tax – Violations.** No person required to pay a construction excise tax under section 3.732 of this code may fail to state or to misstate the full value of the improvement.

**3.748 Construction Excise Tax – Program Review.** Beginning in 2021, and every two years thereafter, the city council shall review the overall management and outcomes of the construction excise tax program.

**Section 2.** The System Development Charges (SDCs) of persons required to pay the construction excise tax pursuant to Section 3.732 will be calculated in accordance with City Code and the City's adopted SDC Methodology. However, for the period of July 1, 2019 through June 30, 2021, the amount of the construction excise tax the person paid pursuant to Section 3.732 will be subtracted from the total amount of City-imposed SDCs the person owes. The person will owe the total City-imposed SDC amount remaining after the construction excise tax is subtracted.

Also, the person will owe in its entirety the Regional Wastewater SDC. If the amount of the construction excise tax the person paid pursuant to Section 3.732 exceeds the total amount of City-imposed SDCs owed, the excess construction excise tax paid will be subtracted from a permit fee the person owes.

**Section 3.** In order to ensure that the City’s SDC fund is able to pay for the infrastructure upon which the City’s SDC Methodology is based, the City intends to make the SDC fund whole by paying with other City funds the City SDCs not paid pursuant to Section 2 of this Ordinance. Similarly, if any amount is subtracted from a permit fee, the City intends to make the permit fund whole by paying with other City funds the permit fee not paid pursuant to Section 2 of this Ordinance.

**Section 4.** The City intends to designate \$500,000 per year of City funds to the City’s Affordable Housing Trust Fund.

**Section 5.** The City intends to convene a citizen advisory committee to make recommendations regarding how construction excise tax revenues should be allocated in accordance with Section 3.732.

**Section 6.** The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Passed by the City Council this**  
\_\_\_\_\_ day of \_\_\_\_\_, 2019.

**Approved by the Mayor this**  
\_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**

**Enrolled  
Senate Bill 1533**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce and General Government)

CHAPTER .....

AN ACT

Relating to affordable housing; creating new provisions; amending ORS 197.309, 320.170, 320.176 and 320.186 and section 1, chapter 829, Oregon Laws 2007; repealing section 9, chapter 829, Oregon Laws 2007; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 197.309 is amended to read:

197.309. (1) **As used in this section:**

(a) **“Affordable housing” means housing that is affordable to households with incomes equal to or higher than 80 percent of the median family income for the county in which the housing is built.**

(b) **“Multifamily structure” means a structure that contains three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit within the same structure.**

[(1)] (2) Except as provided in subsection [(2)] (3) of this section, a [city, county or] metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178[,] a requirement, that has the effect of establishing the sales **or rental** price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale **or rent** to [any] a particular class or group of purchasers **or renters**.

[(2)] (3) [This] **The provisions of subsection (2) of this section [does] do** not limit the authority of a [city, county or] metropolitan service district to:

(a) Adopt or enforce a [land] use regulation, [functional plan] provision or [condition of approval] **requirement** creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or [condition] **requirement** designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

(4) **Notwithstanding ORS 91.225, a city or county may adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178 a requirement, that has the effect of establishing the sales or rental price for a new multifamily structure, or that requires a new multifamily structure to be designated for sale or rent as affordable housing.**

(5) **A regulation, provision or requirement adopted or imposed under subsection (4) of this section:**

(a) May not require more than 20 percent of housing units within a multifamily structure to be sold or rented as affordable housing;

(b) May apply only to multifamily structures containing at least 20 housing units;

(c) Must provide developers the option to pay an in-lieu fee, in an amount determined by the city or county, in exchange for providing the requisite number of housing units within the multifamily structure to be sold or rented at below-market rates; and

(d) Must require the city or county to offer a developer of multifamily structures, other than a developer that elects to pay an in-lieu fee pursuant to paragraph (c) of this subsection, at least one of the following incentives:

(A) Whole or partial fee waivers or reductions.

(B) Whole or partial waivers of system development charges or impact fees set by the city or county.

(C) Finance-based incentives.

(D) Full or partial exemption from ad valorem property taxes on the terms described in this subparagraph. For purposes of any statute granting a full or partial exemption from ad valorem property taxes that uses a definition of "low income" to mean income at or below 60 percent of the area median income and for which the multifamily structure is otherwise eligible, the city or county shall allow the multifamily structure of the developer to qualify using a definition of "low income" to mean income at or below 80 percent of the area median income.

(6) A regulation, provision or requirement adopted or imposed under subsection (4) of this section may offer developers one or more of the following incentives:

(a) Density adjustments.

(b) Expedited service for local permitting processes.

(c) Modification of height, floor area or other site-specific requirements.

(d) Other incentives as determined by the city or county.

(7) Subsection (4) of this section does not restrict the authority of a city or county to offer developers voluntary incentives, including incentives to:

(a) Increase the number of affordable housing units in a development.

(b) Decrease the sale or rental price of affordable housing units in a development.

(c) Build affordable housing units that are affordable to households with incomes equal to or lower than 80 percent of the median family income for the county in which the housing is built.

(8)(a) A city or county that adopts or imposes a regulation, provision or requirement described in subsection (4) of this section may not apply the regulation, provision or requirement to any multifamily structure for which an application for a permit, as defined in ORS 215.402 or 227.160, has been submitted as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application has been submitted to the city or county prior to the effective date of the regulation, provision or requirement.

(b) If a multifamily structure described in paragraph (a) of this subsection has not been completed within the period required by the permit issued by the city or county, the developer of the multifamily structure shall resubmit an application for a permit, as defined in ORS 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application under the regulation, provision or requirement adopted by the city or county under subsection (4) of this section.

(9)(a) A city or county that adopts or imposes a regulation, provision or requirement under subsection (4) of this section shall adopt and apply only clear and objective standards, conditions and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay.

(b) Paragraph (a) of this subsection does not apply to:

(A) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(B) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(c) In addition to an approval process for affordable housing based on clear and objective standards, conditions and procedures as provided in paragraph (a) of this subsection, a city or county may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(A) The developer retains the option of proceeding under the approval process that meets the requirements of paragraph (a) of this subsection;

(B) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(C) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in paragraph (a) of this subsection.

(10) If a regulation, provision or requirement adopted or imposed by a city or county under subsection (4) of this section requires that a percentage of housing units in a new multifamily structure be designated as affordable housing, any incentives offered under subsection (5)(d) or (6) of this section shall be related in a manner determined by the city or county to the required percentage of affordable housing units.

**SECTION 2.** ORS 320.170 is amended to read:

320.170. (1) [*Construction taxes may be imposed by*] A school district, as defined in ORS 330.005, **may impose a construction tax only** in accordance with ORS 320.170 to 320.189.

(2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179, by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code.

**SECTION 3. Section 1, chapter 829, Oregon Laws 2007, is added to and made a part of ORS 320.170 to 320.189.**

**SECTION 4.** Section 1, chapter 829, Oregon Laws 2007, is amended to read:

**Sec. 1.** (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189.**

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189**, construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189** and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income.

**SECTION 5.** ORS 320.176 is amended to read:

320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*] **by a school district pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, "construction cost index" means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

**SECTION 6.** ORS 320.186 is amended to read:

320.186. A school district may pledge construction taxes **imposed pursuant to ORS 320.170** to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183.

**SECTION 7.** Sections 8 and 9 of this 2016 Act are added to and made a part of ORS 320.170 to 320.189.

**SECTION 8.** (1) The governing body of a city or county may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of this section and section 9 of this 2016 Act.

(2)(a) A tax may be imposed on improvements to residential real property that result in a new residential structure or additional square footage in an existing residential structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate of the tax. The tax may not exceed one percent of the permit valuation for residential construction permits issued by the city or county either directly or through the Building Codes Division of the Department of Consumer and Business Services.

(3)(a) A tax may be imposed on improvements to commercial and industrial real property, including the commercial and industrial portions of mixed-use property, that result in a new structure or additional square footage in an existing structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate and base of the tax.

(4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS 320.189 to the city or county that imposed the tax.

(5)(a) This section and section 9 of this 2016 Act do not apply to a tax described in section 1 (2), chapter 829, Oregon Laws 2007.

(b) Conformity of a tax imposed pursuant to this section by a city or county to the requirements of this section and section 9 of this 2016 Act shall be determined without regard to any tax described in section 1 (2), chapter 829, Oregon Laws 2007, that is imposed by the city or county.

**SECTION 9.** (1) As soon as practicable after the end of each fiscal quarter, a city or county that imposes a construction tax pursuant to section 8 of this 2016 Act shall deposit the construction tax revenues collected in the fiscal quarter just ended in the general fund of the city or county.

(2) Of the revenues deposited pursuant to subsection (1) of this section, the city or county may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the city or county incurred in complying with this section.

(3) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use the remaining revenues received under section 8 (2) of this 2016 Act as follows:

(a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309 (5)(c) and (d) and (7);

(b) Fifteen percent to be distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance; and

(c) Thirty-five percent for programs and incentives of the city or county related to affordable housing as defined by the city or county, respectively, for purposes of this section and section 8 of this 2016 Act.

(4) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use 50 percent of the remaining revenues received under section 8 (3) of this 2016 Act to fund programs of the city or county related to housing.

**SECTION 10.** Section 9, chapter 829, Oregon Laws 2007, is repealed.

**SECTION 11.** A city or county may not adopt a regulation, provision or requirement under ORS 197.309, as amended by section 1 of this 2016 Act, until the 180th day after the effective date of this 2016 Act.

**SECTION 12.** This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by Senate February 26, 2016

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Lori L. Brockert, Secretary of Senate

.....  
Peter Courtney, President of Senate

Passed by House March 3, 2016

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State