

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Work Session: Implementation of Construction Excise Tax and Use of Affordable Housing Trust Funds

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Meeting Date: July 24, 2019  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 2  
Staff Contact: Stephanie Jennings  
Contact Telephone Number: 541-682-5529

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### ISSUE STATEMENT

Eugene City Council and State Legislature both recognize traditional funding sources for affordable housing—especially federal sources—have declined over time. The reduction in resources available for affordable housing has challenged our community’s ability to meet the housing needs of Eugene residents with limited incomes. To help address this issue Eugene City Council passed Ordinance No. 20609 (Attachment A) in April 2019 implementing a local construction excise tax that will contribute to an Affordable Housing Trust Fund. The ordinance went into effect on July 1, 2019.

During this work session, staff will provide an update on CET implementation as well as a proposed timeline, advisory committee structure, and priorities for the Affordable Housing Trust Fund. The work session provides an opportunity for council input on desired outcomes for use of the funds.

### BACKGROUND

In 2016, Oregon Legislature passed Senate Bill 1533 authorizing Oregon cities and counties to establish a construction excise tax. The law authorizes a city or county to tax new residential and commercial buildings, additions, and alterations. 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.

On April 8, 2019, City Council passed an ordinance establishing a local CET. From July 1, 2019, through June 30, 2020, residential and commercial projects will be taxed at .33 percent of the permitted value of eligible improvements. Beginning July 1, 2020, and thereafter, the tax increases to .50 percent. The revenue generated through the CET will accrue in the City’s Affordable Housing Trust Fund to support programs, incentives, and services related to the housing of households earning 100 percent of area medium income and below. In addition, the City intends to designate \$500,000 per year of City funds to the Affordable Housing Trust Fund. The first allocation of City funds will occur during the Supplemental Budget process in December 2019.

During the first two years, CET charges will be offset by a reduction in System Development Charges and permit fees so that additional costs are not added to improvements subject to the tax. A fact sheet has been developed to educate the public about the tax and its implementation and is included as Attachment B.

The CET is one of many strategies to address barriers to housing affordability, availability and diversity of type identified through the Housing Tools and Strategies initiative. The first quarterly update on progress implementing other strategies will be provided to Council via memo before Summer break.

### **PREVIOUS COUNCIL DIRECTION**

[April 12, 2017, Work Session](#) - City Council received an introductory presentation on Senate Bill 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.

[April 8, 2019, Council Meeting](#) – City Council adopted 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.

### **COUNCIL OPTIONS**

Provide input into proposed timeline, advisory committee structure, and desired outcomes for the Affordable Housing Trust Fund.

### **CITY MANAGER'S RECOMMENDATION**

City Manager currently has no recommendation.

**ATTACHMENTS**

- A. Ordinance No. 20609
- B. Eugene Construction Excise Tax Overview and Frequently Asked Questions

**FOR MORE INFORMATION**

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**ORDINANCE NO. 20609**

**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) Beginning July 1, 2020: 0.50 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) Beginning July 1, 2020: 0.50 percent of the value of the improvement.
- (3) 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  
8<sup>th</sup> day of April, 2019.

  
Deputy City Recorder

Approved by the Mayor this  
10<sup>th</sup> day of April, 2019.

  
Mayor

## What Is the Construction Excise Tax?

In 2016, Oregon Legislature passed Senate Bill 1533 authorizing Oregon cities and counties to establish a construction excise tax (CET). In May of 2019, the Eugene City Council passed an ordinance establishing the tax in Eugene. The tax will create a dedicated source of funding for affordable housing. The law authorizes a city or county to tax new residential and commercial buildings, additions, and alterations. Specifically, it applies to all improvements which result in a new structure, additional square footage to an existing structure, or addition of living space to an existing structure.

## Why is this tax needed?

Eugene City Council and State Legislature both recognize traditional funding sources for affordable housing – especially federal sources – have declined. Because of this decline, our community has fallen far behind in meeting the housing needs of Eugene residents with limited incomes. The money collected from the CET will be put into the Affordable Housing Trust Fund. This fund will provide critical funding and is one part of a larger effort to help address the housing challenge.

## What does the CET pay for?

Money collected from the CET will go into the Affordable Housing Fund, which will pay for projects and programs that increase availability and access to owner- and renter-occupied housing that is affordable to lower income community members. Examples of how these funds may be used include:

- Gap financing for the development of new affordable housing
- Acquisition of existing housing that will become affordable
- Acquisition of land for future affordable housing development
- Down payment assistance for home buyers
- Rental or security deposit assistance for people who rent their homes.

CET resources will be used to supplement the

limited federal resources that support the City's existing federal affordable housing programs. Revenues will be allocated to fund projects, programs, incentives, and services related to the housing of households earning 100% of area medium income and below, and in accordance with state law.

The City is in the process of forming a citizen advisory committee that will advise on the use of Affordable Housing Trust Funds resources. It is anticipated that funds will be allocated to housing programs and projects starting in early 2020.

## Who needs to pay and when?

The CET is required to be paid by the developer or property owner who is developing property within Eugene city limits. The CET applies to certain improvements to property that result in additional square footage or improvements which create additional living space. The CET is paid when the permit is issued.

The CET goes into effect July 1, 2019. For the first two years of implementation, the CET will be offset by a reduction in system development charges (SDC) equal to the amount of the CET. If the SDCs are less than the total of the CET, permit fees will be reduced to offset the total of the CET. This means, for the first two years, there will be no additional cost to development.

## Who is exempt from paying the CET?

The following are exempt from the CET:

- Private school improvements
- Public improvements as defined in [ORS 279A.010](#)
- Residential housing that is guaranteed to be affordable to households that earn no more than 80% of the median household income for a period of at least 60 years following the date of construction
- Public or private hospital improvements
- Improvements to religious facilities

primarily used for worship or education associated with worship

- Agricultural building as defined by ORS 455.315
- Long term care facilities operated by a not-for-profit corporation, as defined in ORS 442.015
- Residential care facilities operated by a not-for-profit corporation, as defined in ORS 443.400
- Continuing care retirement communities operated by a not-for-profit corporation, as defined in ORS 101.020
- Residential dwellings sold for \$250,000 or less
- Housing for low-income persons that is exempt from systems development charges (SDCs) pursuant to section 7.725c
- Projects granted a multi-unit property tax exemption (MUPT) by the city.

To demonstrate a project is exempt from the CET a [Construction Excise Tax Exemption Form](#) must be completed, signed, and submitted with the building permit application identifying what exemptions are applicable to the project.

### **How much is the CET?**

For the first year, the CET will be 0.33% of the value of permitted work and will increase to 0.5% the following year. It is

projected to remain at 0.5% for every year thereafter.

### **How long is the CET active?**

Based on legislation adopted in 2016, the City can continue levying the tax for an indefinite amount of time. Eugene City Council will review the overall management and outcomes of the program every two years.

### **Whom can I contact for more information?**

If you have additional questions, you may contact the City of Eugene's Building and Permit Services by phone: (541) 682-5086.

Additional information on the affordable housing programs and the advisory committee can be found at:

[eugene-or.gov/affordablehousingfund](http://eugene-or.gov/affordablehousingfund)

### **What is "affordable housing" and how can I learn more about City affordable housing programs and resources?**

Across the United States, housing costs are considered "affordable" if the monthly rent or mortgage, plus utilities, add up to no more than one-third (or 30%) of gross household earnings. Affordable housing developments receive public subsidies in exchange for a commitment to provide homes with limited rents for people with limited incomes.

The City of Eugene has supported the creation of affordable housing using both federal and local funds for over 40 years.

[www.eugene-or.gov/bps](http://www.eugene-or.gov/bps)