

**ADMINISTRATIVE ORDER NO. 44-21-07-F**  
**of the**  
**City Manager**

**AMENDING AND REPLACING COMMUNITY SAFETY PAYROLL TAX  
ADMINISTRATIVE RULE R-3.762 ADOPTED BY ADMINISTRATIVE  
ORDER NO. 44-20-05-F.**

**A.** Pursuant to the authority contained in Sections 2.019, 3.756, 3.760, 3.762, and 3.764 of the Eugene Code, 1971, on August 19, 2020, I issued Administrative Order No. 44-20-05-F adopting Community Safety Payroll Tax Administrative Rule R-3.762 to implement the provisions of Sections 3.750 through 3.768 of the Code regarding a Community Safety Payroll Tax.

**B.** On September 21, 2021, I issued Administrative Order No. 44-21-05 ordering that notice be given of the opportunity to submit written comments on a proposal to amend the Rule to correct subsection 1(b) of Rule R-3.762-C, where subsection 1(b) had the effect of excluding self-employed entities with employees from being subject to the quarterly Employer Tax. This amendment will bring the Rule into alignment with Council's intent of a tax that is shared between employers and employees and will apply to the first quarter filing of 2022 and every quarter thereafter. The Rule amendment is necessary to clarify subsection 1(e) of Rule R-3.762-C to indicate that an employer that qualifies for the reduced tax rate of 0.0015 on the first \$100,000 of wages paid by the employer may apply the reduced tax rate to both the quarterly Employer tax and annual Self-Employment tax.

**C.** Notice of the proposed amendments was provided in accordance with EC 2.019(2)(a) and was scheduled to be published in the Register Guard newspaper on September 24, 2021, as required by EC 2.019(2)(b). During the 15-day comment period, a number of comments were received. The comment period closed at the end of the day on October 11, 2021, after which the City learned that the Notice had not been published in the newspaper and, therefore, the notice requirement set forth in EC 2.019(2)(b) was not met.

**D.** In order to comply with all Notice of Rulemaking requirements set forth in EC 2.019(2), a subsequent Notice of the proposed amendments had to be given. However, re-noticing the proposed Rule amendments pursuant to EC 2.019(2) would have caused a delay such that it would be difficult for tax preparers to address any changes in the Rule. Therefore, on November 2, 2021, I issued Administrative Order No. 44-21-06 adopting the Rule amendments as emergency amendments pursuant to EC 2.019(6) so that they would go into effect immediately and remain in effect for no longer than 180 days, with the intent that I would process identical Rule amendments under EC 2.019(2) for permanent adoption.

**E.** On December 7, 2021, I issued Administrative Order No. 44-21-07 ordering that a second Notice of the proposed Rule amendments be given. The Rule amendments proposed by Administrative Order No. 44-21-07 are identical to those proposed by Administrative Order No. 44-21-05 on September 21, 2021, except for the addition of a definition of "Federal Government."

**F.** Notice of the proposed Rule amendments was given by making copies of the Notice available to any person who had requested such notice and by publication of the Notice in the Register Guard newspaper on December 11, 12, 13, 14, and 15, 2021. In addition, a copy of the Notice and proposed Rule amendments was made available for review at the 2<sup>nd</sup> floor reference desk at the Eugene Downtown Library, 100 W. 10<sup>th</sup> Avenue, Eugene, Oregon, and on the City of Eugene’s website. The Notice informed the public of the opportunity to submit comments on the proposed amendments until the end of the day on December 27, 2021. The written comments received during the public comment period for the Notice issued pursuant to Administrative Order No. 44-21-05 are addressed in the City Manager's Findings in Consideration of Written Submissions attached as Exhibit A to this Order. No comments were received in response to the Notice issued pursuant to Administrative Order No. 44-21-07.

**On the basis of these findings, I order that:**

**1.** Community Safety Payroll Tax Administrative Rule R-3.762 is amended by adding the definition of “Federal Government” and updating the definition of “Wages” in Community Safety Payroll Tax Administrative Rule R-3.762-B, and amending subsections 1(b) and (e) in Rule R-3.762-C. These amendments apply to the first quarter filing of 2022 and every quarter thereafter.

**2.** The unamended provisions of Community Safety Payroll Tax Administrative Rule R-3.762 adopted by Administrative Order No. 44-20-05-F are reaffirmed and incorporated into Community Safety Payroll Tax Administrative Rule R-3.762 adopted by this Order.

**3.** Administrative Order No. 44-20-05-F is superseded by this Administrative Order No. 44-21-07-F as of the effective date of this Order.

**4.** As of the effective date of this Order, the following is Community Safety Payroll Tax Administrative Rule R-3.762:

**COMMUNITY SAFETY PAYROLL TAX  
ADMINISTRATIVE RULE R-3.762**

**R-3.762-A DESIGNATION OF TAX ADMINISTRATOR.**

The Tax Administrator is the City of Eugene Finance Director or any person or entity with whom the City Manager contracts to perform the tax administration duties.

**R-3.762-B DEFINITIONS.** In addition to the definitions contained in EC 3.752, the following words and phrases mean:

**Business Location.** Any physical location in the Eugene city limits to which an employer or self-employed person conducts business operations, including any real property, building, facility, or office owned, leased, or occupied by the employer or self-employed person. “Business location” does not include temporary job sites

generated by customers located in the Eugene city limits, including but not limited to construction sites or plumbing/electrical/landscaping clients.

**Federal Government.** An employer whose employees are subject to the payroll tax imposed by EC 3.754(3).

**Net Earnings from Self-Employment.** As defined in section 1402 of the Internal Revenue Code of 1986, as that section was in effect and operative on December 31, 1988.

**Self-Employed Person.** Someone with net earnings from self-employment, including a sole proprietor, independent contractor, or individual partner in a partnership. For purposes of EC 3.754, a self-employed person is an employer and can have employees.

**Taxpayer.** A person subject to tax or required to withhold and remit tax under EC 3.754.

**Wages.** As defined in ORS 267.380(1)(c), (2)(b) - (c), and 2(e) - (j). For the purposes of a self-employed person, “wages paid by the employer” means net earnings from self-employment. If a self-employed person also has employees, wages of the employee(s) are as defined in ORS 267.380(1)(c), (2)(b) - (c), and 2(e) - (j).

## **R-3.762-C    EMPLOYER PAYROLL TAX.**

### **1.    Tax Owed.**

**(a)**    An employer with a physical address in the City must pay tax on the total wages paid by the employer at the rate set forth in EC 3.754(1) or (2). If an employer with a physical address in the City has one or more business locations outside the City, no tax is owed by the employer for those hours an employee works at an employer’s business location that is outside the City.

**(b)**    An employer must pay a tax on the net earnings from self-employment. A self-employed person with employees must also pay a quarterly tax on wages paid to employees.

**(c)**    For purposes of EC 3.754(2), an employer’s number of employees is the average number of employees employed by the employer of the taxable year.

**(d)**    For purposes of EC 3.754(2), a self-employed person with two, one, or no employees is “an employer with two or less employees.”

(e) An employer that qualifies for the reduced tax rate of 0.0015 on the first \$100,000 of wages paid by the employer may apply this reduced rate on the final quarterly employer tax return and may deduct from the tax owed on this final quarterly tax return the overpaid taxes on the prior quarterly tax returns. If amount overpaid exceeds the total amount owed on the final quarterly tax return, the amount overpaid will be credited against the employer's tax owed the next tax period or the employer may request a refund of the overpaid amount. Notwithstanding the foregoing, a self-employed person that qualifies for the reduced rate of 0.0015 on the first \$100,000 of wages paid to employees may apply this reduced rate on the employer's final quarterly tax return as well as the annual self-employment return.

**2. Payments and Returns.**

(a) Employers shall pay the tax due and file returns quarterly for the previous calendar quarter on or before the last day of January, April, July, and October.

(b) Notwithstanding subsection (a), taxes owed by an employer that is a self-employed person with net-earnings from self-employment shall be paid, and return filed, annually for the previous taxable year on or before the 15<sup>th</sup> day of the fourth month following the end of the taxable year.

(c) A partnership may choose to pay the tax due on behalf of individual partners. If a partnership pays the tax owed on behalf of all individual partners, the individual partners are not required to file any return with the City unless they have net earnings from self-employment from sources other than such partnership.

(d) When the tax due date falls on a Saturday, Sunday or legal holiday, the tax and quarterly return or annual return are due on the next business day.

(e) A payment made or return filed before the due date as provided in in this section shall be considered as made on the due date of the payment or return.

(f) An employer that is a self-employed person with net-earnings from self-employment and that receives an extension to file a federal or Oregon individual income tax return, will be allowed the same extension.

(g) Taxes owed by employers shall be paid and filed by the employer on the forms provided by the City.

**R-3.762-D EMPLOYEE PAYROLL TAX.**

**1. Tax Owed.**

(a) An employee working at an employer located in the City must pay a tax on the employee's total wages at the rate set forth in EC 3.754(3), (4) or (5). If an employee works for an employer located in the City that also has one or more business locations

outside the City, no tax is owed by the employee for those wages an employee earns at an employer's business location that is outside the City.

(b) The applicable tax rate is based on the annualized income of the employee per pay period using tax rate charts provided by the City and consistent with the per hour rates set forth in EC 3.754(3), (4) or (5). The applicable tax rate is determined without adjustment for overtime wages.

## **2. Payments and Returns.**

(a) An employer must withhold, report, and remit the employee tax required by EC 3.754(3) – (5). The employer shall remit the tax withheld from an employee and file tax returns quarterly for the previous calendar quarter on or before the last day of January, April, July, and October. When the tax due date falls on a Saturday, Sunday or legal holiday, the tax and quarterly return or annual return are due on the next business day.

(b) A payment made or return filed before the due date as provided in this section shall be considered as made on the due date of the payment or return.

(c) Taxes withheld by employers from employees shall be remitted and filed by employers on the forms provided by the City.

## **R-3.762-E AUDITS.**

1. As soon as practicable after a return is filed, the City shall examine or audit it if the City deems such examination or audit practicable. If the City discovers from an examination or an audit that a deficiency exists, it shall compute the tax and give notice to the employer filing the return of the deficiency and of the City's intention to assess the deficiency, plus interest and any appropriate penalty. Except as provided in subsection 2 of this section, the notice shall:

(a) State the reason for each adjustment; and,

(b) Provide the authority upon which the adjustment is based.

2. When the notice of deficiency described in subsection 1 of this section results from the correction of a mathematical or clerical error and states what would have been the correct tax but for the mathematical or clerical error, such notice need state only the reason for each adjustment to the return.

3. The Tax Administrator, or any person or representative authorized by the City, may examine or cause to be examined during normal business hours, and upon notification to the taxpayer, any books, papers, records, or memorandum bearing upon the matter required to be included in the return, including copies of the taxpayer's state and federal tax returns, for the purpose of ascertaining the accuracy of any return or for the purpose of making an estimate of tax amount required to be paid to the City.

**R-3762-F     TIME LIMIT FOR ISSUING A DEFICIENCY.**

1. At any time within three years after the return was filed, the City may give notice of a deficiency.
2. If the City finds that an amount equal to 25 percent or more of the wages or net earnings from self-employment reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any time within five years after the return was filed.
3. The limitations to the giving of notice of a deficiency provided in this section do not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.

**R-3.762-G     PENALTIES AND INTEREST.**

1. An employer who fails to file a return or fails to pay or remit the tax required by EC 3.754(1) – (5) by the due date shall incur the following penalties:
  - (a) If tax due is paid or remitted after the due date, a penalty of 5 percent of the tax due.
  - (b) If a return is filed more than 30 days after the due date, an additional penalty of 20 percent of the tax due.
  - (c) The tax administrator may impose a penalty equal to 100 percent of the tax due if the Tax Administrator determines no quarterly returns are filed for 12 consecutive quarters or three consecutive years for annual returns.
2. In addition to the penalties and interest set forth in subsection 1 of this section, an employer that fails to deduct and withhold the tax required by EC 3.756:
  - (a) Is deemed responsible for the payment of the tax obligation in an amount equal to the amount required to be withheld from the employee's wages and remitted to the City; and
  - (b) Is subject to a penalty of \$250 per employee, up to a maximum penalty of \$25,000, if the employer knowingly fails to deduct and withhold the tax.
3. Each penalty imposed under this section is in addition to any other penalty imposed under this section. All payments received shall be credited first to penalty, then to accrued interest, and then to tax due.
4. Interest on unpaid tax accrues at the rate established by ORS 305.220 and computed on a daily basis from the time the tax is due, during which the tax remains unpaid.

**R-3.762-H PENALTY WAIVER DUE TO GOOD CAUSE.**

1. The Tax Administrator may reduce or waive a penalty imposed pursuant to section R-3.762-G, subsections 1(a) and 1(b), if the Tax Administrator concludes that there was good cause for the failure to file, pay, or remit at the time the return and payment were due.

2. A request for a penalty reduction or waiver shall be submitted to the Tax Administrator on the form provided by the City and shall include at a minimum the name and address of the taxpayer, the tax period associated with the request, and an explanation of good cause serving as the basis for the requested penalty reduction or waiver.

3. For the purpose of this rule, “good cause” means circumstances beyond the reasonable control of the taxpayer, including but not limited to:

(a) Death or serious illness of the taxpayer or member of the taxpayer’s immediate family;

(b) Destruction by fire, a natural disaster, or other casualty of the taxpayer’s home, place of business, or records needed to prepare the returns and remit payment;

(c) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of the return and tax.

4. For the purposes this rule, “good cause” does not include:

(a) Reliance on a professional to merely prepare a return and remit the tax on time;

(b) Lack of knowledge filing and payment deadlines or requirements;

(c) Mere inability of the taxpayer to pay the tax; and

(d) Other circumstances that are within the control of the taxpayer or the taxpayer’s representatives.

5. Notwithstanding subsection 2 of this section, for the first two quarters of the 2021 tax year, the Tax Administrator may reduce or waive a penalty imposed pursuant to section R-3762-G, subsections 1(a) and 1(b) without first receiving a request. Notwithstanding subsections 3 and 4 of this section, reduction or waiver by the Tax Administrator during the first two quarters of the 2021 tax year may be based on the Tax Administrator’s general conclusion that taxpayers are working in good faith to comply with the City’s newly imposed payroll tax.

**R-3.762-I     REFUNDS.**

**1.     Employer Tax.**

(a)     If an employer has overpaid taxes due for total wages paid for a quarter and files an original or amended quarterly tax return, the City will credit the overpayment toward the employer's liability for the current quarter. If the employer requests a refund of the overpayment, the request shall be made on the quarterly return for which the overpayment is determined.

(b)     If an employer has overpaid the taxes due for net earnings from self-employment and files an original or amended annual tax return, the City will refund the overpayment to the employer.

(c)     If the employer is no longer in business, and all returns have been filed, the overpayment will be refunded.

**2.     Employee Tax.**

(a)     If an employee asserts that the actual amount of taxes withheld and remitted by an employer was computed on an amount that is not taxable or is excess of the correct tax amount, the employee may request a refund of the overpayment in writing to the employer. The request shall be mailed or delivered to the employer within 30 days of the due date for the taxes.

(b)     Written notification of excess employee taxes paid and any request for refund shall include the employer's business name, nature of excess taxes paid, and refund amount requested.

(c)     If, within 60 days of the date of the original request for refund by the employee, the employer does not return the excess tax to the employee, the employee may appeal to the Tax Administrator by filing a written appeal within 120 days of the date of the original request for refund.

(d)     The Tax Administrator must refund to an employee the excess taxes when shown by satisfactory proof that the employee paid excess tax, the tax was not refunded by the employer, and the employee made a timely request for refund of excess taxes as established in this section.

(e)     If the Tax Administrator determines pursuant to this section that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the City with interest at the rate established by ORS 305.220 for the period beginning 45 days after the due date of the return or the date the tax was paid, whichever is later.

(f)     For purposes of subsection 2 of this section, "Tax Administrator" means the Tax Administrator or the Tax Administrator's designee.

3. The City may not allow or make a refund after three years from the date the return was filed, or two years from the date the tax (or a portion of the tax) was paid, whichever period expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer in compliance with this section. In any case, if the original return is not filed within three years of the due date of the return, the City may allow or make a refund only of amounts paid within two years from the date of the filing of the claim for refund.

**R-3762-J BOOKS AND RECORDS.**

1. It shall be the duty of every employer required to remit or pay the taxes imposed by EC 3.762 to keep and preserve suitable records and other such book and accounts as may be necessary to determine the amount of the tax liability of the employer or taxpayer. The books and records must be kept for a period equal to the applicable limitation period for assessment of the tax.

2. The City, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of the total wages paid, employee wages or net earnings of a self-employed taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The City shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the Municipal Court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of any law imposing tax on or measured by wages or net earnings of a self-employed individual.

**R-3.762-K RIGHT TO APPEAL DETERMINATION OF TAX LIABILITY.**

A taxpayer who is aggrieved by a determination of tax liability by the Tax Administrator may appeal the determination through the procedures set forth in Section 2.021 of the Eugene Code, 1971. A Taxpayer who wishes to appeal shall also contact the Tax Administrator within 15 days of the date of the notice of determination of tax liability.

**R-3.762-L REPORTING EMPLOYEE PAYROLL TAX WITHHELD.**

Employers must report the employee subject wages (box 18), tax withheld (box 19), and "EUG" as the locality name (box 20) of the employee's Form W-2.

**R-3.762-M EMPLOYER REGISTRATION.**

New employers with a physical address in the City must register with the City. A registered employer must submit a return for each reporting period, even though the employer may not have

had any payroll during that period. The responsibility to file a return ceases only after the employer notifies the City that the employer no longer has employees subject to the payroll tax.

**R-3.762-N ENFORCEMENT.**

In addition to the penalties and interest set forth in Section R-3.762-G, if a taxpayer has violated or is violating any provision of these Rules or EC 3.754 through 3.768, the City Manager or designee may impose a compliance fee in an amount established by the City Manager pursuant to EC 2.020. Prior to imposing a compliance fee, the City Manager or designee shall pursue reasonable attempts to secure voluntary compliance, failing which the City Manager or designee may impose a compliance fee. A taxpayer may appeal the imposition of a compliance fee through the procedures set forth in EC 2.021.

**Dated and effective this 4th day of January, 2022.**



Handwritten signature of Sarah Medary in blue ink, consisting of stylized initials 'SM' and a small 'ic' below.



Handwritten signature of Sarah Medary in blue ink, appearing as 'smedary'.

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**Sarah Medary  
City Manager**

## **City Manager's Findings in Consideration of Written Submissions**

During Administrative Order No. 44-21-05's 18-day comment period from September 24 – October 11, 2021, the City received 8 written comments. Of those 8 written comments, 7 related specifically to the proposed Payroll Tax Rule amendments ("proposed Rule Amendments"). The remaining comment related to a 3<sup>rd</sup> party tax preparer system implementing a software update to its platform. No comments were received in response to the Notice issued pursuant to Administrative Order No. 44-21-07. A summary of all the comments received, and findings addressing the comments, are set out below.

### **1. Comments regarding the tax reporting frequency under the proposed Rule Amendments.**

**Findings:** Eugene Code (EC) Section 3.756, adopted by the City Council via ordinance, establishes the frequency of submission of the payroll taxes. Administrative rules cannot alter the provisions of the City Code, thus, these proposed Rule Amendments cannot alter the tax reporting frequency set forth in EC 3.756.

The tax reporting frequency of the Community Safety Payroll Tax(es) under the proposed Rule Amendments are consistent with the filing frequencies for other state and local taxes (SUTA, OR Withholding, and Transit taxes such as the Statewide Transit Tax and LTD/Trimet). While these taxes are not connected to the Community Safety Payroll Tax, the filing dates and frequencies are consistent for both Employee/Employer quarterly submissions as well as for annual filings of Self-Employment returns.

No changes are being made to the proposed Rule Amendments as a result of these comments.

### **2. Comments expressing uncertainty regarding whether the proposed Rule Amendments apply to sole proprietors/partnerships that have no employees.**

**Findings:** The proposed Rule Amendments do not change the reporting requirements for sole proprietors/partnerships who have no employees. Self-Employment returns will continue to be an annual filing in April of each year and will be based on net earnings from self-employment for the prior calendar year. The first Self-Employment return will be due in April of 2022.

The proposed Rule Amendments do affect sole proprietors and partnerships who have employees by having the business entity be subject to the quarterly Employer Tax return. The language in the original Administrative Order excluded Sole Proprietors and Partnerships from contributing to this employer-paid tax. The proposed Rule Amendments will correct this language and bring the Administrative Rules into alignment with City Council's original intent and ensure that employers are treated equitably, regardless of business entity structure.

Signature: 

Email: mcariaga@eugene-or.gov

No changes are being made to the proposed Rule Amendments as a result of these comments.

**3. Comment supportive of the proposed Rule Amendments.**

**Findings:**

Comment was supportive of proposed Rule Amendments due to perceived simplicity resulting from change.

No changes are being made to the proposed Rule Amendments as a result of this comment.

**4. Comment opposing the proposed Rule Amendments.**

**Findings:** The reason for the opposition to the proposed Rule Amendments was not noted.

No changes are being made to the proposed Rule Amendments as a result of this comment.

**5. Comment seeking an update to when a 3<sup>rd</sup> party tax preparation system will implement software updates on its platform.**

**Findings:** Each payroll service and software company may vary in their implementation timeframes. We are unable to give instructions or implementation directions for 3rd party software.

No changes are being made to the proposed Rule Amendments as a result of this comment.

**6. Comment regarding confusing Payroll Tax website.**

**Findings:** We are currently working on updating our website to make it easier to understand and navigate for users. We hope to have the website updated by the end of 2021.

No changes are being made to the proposed Rules Amendments as a result of this comment.

**7. Comments regarding committing errors in initial quarters of reporting.**

**Findings:** Amended reports can be filed for prior quarters and forms/instructions are available on the City's website. When an amended report is submitted that results in a credit, any overpayments will be applied as a pre-payment towards future liabilities unless a request for refund is indicated.

No changes are being made to the proposed Rule Amendments as a result of these comments.

**8. Comments requesting clarification on if change would be in effect for Q4/2021 tax period due 01/31/2022 or for tax period Q1/2022 due 05/02/2022.**

**Findings:** Proposed changes would be in effect for tax periods beginning Q1/2022 onward. Therefore the first filing that would reflect this change would be due on 05/02/2022.

No changes are being made to the proposed Rule Amendments as a result of this comment.