

**CITY OF NEWPORT**

**ORDINANCE NO. 2114**

**AN ORDINANCE AMENDING TITLE III OF THE  
NEWPORT MUNICIPAL CODE TO ESTABLISH A  
CONSTRUCTION EXCISE TAX FOR AFFORDABLE HOUSING**

**WHEREAS**, Oregon's 2016 Legislative Session included the passage of Senate Bill 1533 (SB 1533) authorizing cities and counties to implement Construction Excise Taxes (CETs) to help pay for affordable housing programs; and

**WHEREAS**, affordable housing, except where otherwise noted in the law, is defined as affordable to households with incomes equal to or higher than 80% median family income for Lincoln County; and

**WHEREAS**, the City's rural location, terrain, limited infrastructure, and desirability as a vacation destination contribute to there being a lack of affordable housing within the community; and

**WHEREAS**, Goals 1 and 2 of the Newport Comprehensive Plan call for the provision of housing in adequate numbers, price ranges, and rent levels that are affordable to workers and commensurate to the financial capabilities of Newport households; and

**WHEREAS**, to achieve these goals the City is committed to assessing the use of creative funding tools, such as the construction excise tax, to facilitate the development of needed housing; and

**WHEREAS**, the imposition of a construction excise tax, will provide a dedicated source of revenue to support down payment assistance programs, affordable housing development incentives, and other affordable housing programs where none currently exist; and

**WHEREAS**, while the Council recognizes that substantial upfront development charges can negatively impact the viability of construction projects, the Council anticipates that this excise tax when considered in conjunction with corresponding reductions to System Development Charges instituted with Resolution No. 3786, will not lead to increased negative impacts to the viability of construction projects; and

**WHEREAS**, the proposed amendments to Title III of the Newport Municipal Code relating to the imposition of a construction excise tax for affordable housing were presented to the Planning Commission at a public hearing on June 26, 2017 and, after considering public testimony and information contained in the record, the Commission voted to recommend adoption of the amendments; and

**WHEREAS**, the Newport City Council held public hearings on July 17, 2017 and August 7, 2017 and, after considering public testimony, the Planning Commission's recommendation, and information contained in the record, voted to adopt the amendments.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** Newport Municipal Code Chapter 3.15, Affordable Housing Construction Excise Tax, is hereby established as illustrated in Exhibit "A".

**Section 2.** The City Council shall reevaluate the construction excise tax no later than ten years.

**Section 3.** This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: August 7, 2017.

Signed by the Mayor on August 8, 2017.

  
Sandra N. Roumagoux, Mayor

ATTEST:

  
Margaret M. Hawker, City Recorder

APPROVED AS TO FORM:

  
Steven E. Rich, City Attorney

## CHAPTER 3.15 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

### 3.15.005 Purpose

This chapter establishes a construction excise tax on commercial and residential improvements to provide funding for affordable housing in the city.

### 3.15.015 Definitions

The following definitions apply in this chapter.

- A. **Area Median Income** means the Lincoln County median household income by household size as defined by the United State 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 3.15.055 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.

### 3.15.020 Imposition of Tax

- 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 annually by City Council 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 annually by City Council 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].
- D. The percentage rate of the construction excise tax shall not exceed that permitted by state law.

3.15.025 Exemptions

- A. The construction excise tax shall not apply to 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 non-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 Newport. Such exemption is limited to the amount of the city's investment in the improvement.
- B. The city manager 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.

#### 3.15.030 Collection of Tax

- A. The construction excise tax is payable on issuance of a building permit for the construction of improvements. A building permit may not be issued until the construction excise tax is paid or an agreement is entered to pay in installments as allowed by this chapter.

#### 3.15.035 Statement of Full Value of Improvement Required

- A. It is a violation of this Chapter for any person or legal entity 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.

#### 3.15.040 Installment Payments

- A. The owner of the parcel of land subject to a construction excise tax may apply for payment in twenty 20 semi-annual installments, to include interest on the unpaid balance, in accordance with state law. A shorter payment plan is acceptable if approved by the city. The parcel of land shall be subject to a lien for the unpaid balance.
- B. The city manager shall provide application forms for installment payments which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- C. An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.

- D. The city manager shall docket the lien in the city's lien docket. From that time the city shall have a lien upon the described parcel for the unpaid balance, together with interest on the unpaid balance. The lien shall be enforceable in any manner authorized or permitted by state law.

#### 3.15.045 Interest and Penalties

- A. All amounts of construction excise tax not paid when due shall bear interest on the entire unpaid amount at the rate of .83 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original date to the 15<sup>th</sup> 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 3.15.025(A)(8).
  - 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.

#### 3.15.050 Refunds

- A. The City shall issue a refund to any taxpayer 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 3.15.025.
  - 2. If the taxpayer establishes that construction of the improvements was not commenced and the associated

building permit has been cancelled by the Community Development Department.

3. Upon a determination by the city manager or the Council that the amount of any construction excise tax 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 the date a written request for refund is filed with the city or give written notice of the reasons why the refund request has been denied.
  - C. Any request for refund must be submitted within three years from the date of payment.

#### 3.15.055 Segregation and Use of Revenue

- A. The percentage of gross revenues from the construction excise tax reserved for program administration shall be established annually by Council resolution. Such amount shall be deposited in the General Fund and may not exceed four percent of the gross revenue.
- B. Net revenues from the construction excise are to be segregated by accounting practices from all other funds of the city, then used or transferred in a manner required to meet the obligations set out for these revenues under state law.
- C. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for construction excise taxes collected and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part with construction excise tax revenues shall be included in the annual accounting.

#### 3.15.060 Appeal Procedure

- A. Any written determination issued by the Community Development Department applying the provisions of this Chapter, believed to be in error, may be reviewed by the city manager if the recipient requests review in writing within ten days after receipt of the written determination together with all documentation required to support the request.

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Construction Excise Tax

- B. Appeals of any other decision required or permitted to be made by the city manager under this Chapter must be filed in writing with the city manager within 10 days of the decision.
- C. After providing notice to the appellant, the City Council shall determine whether the city manager's decision or the expenditure is in accordance with the provisions of this Chapter and state law. The Council may affirm, modify, or overrule the decision. The decision of the Council shall be reviewed only by writ or review.
- D. The filing of any appeal shall not stay the effectiveness of the written determination unless the Council so directs.

3.15.065 Penalty

Violation of this chapter is a civil infraction.