

ORDINANCE NO. 2042

An Ordinance Amending Title 15 (Buildings and Construction) of the Hood River Municipal Code, by Adding a New Chapter 15.17 (Construction Excise Tax) and Establishing a 1% Construction Excise Tax for Affordable Housing Programs.

The Hood River City Council adopts the following findings:

WHEREAS, the City of Hood River is an Oregon home-rule charter municipal corporation with a City Charter that grants it all the powers and authority that the constitution, statutes and common law of the United States and this State expressly or impliedly grant or allow as though each such power was specifically enumerated; and

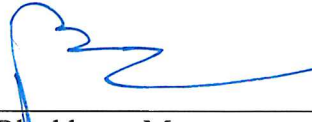
WHEREAS, the Hood River City Council adopted the recommendations of a 2015 Housing Needs analysis that included Action item 3.6: “Identify sources of funding to support government-subsidized affordable housing development;” and

WHEREAS, the 2016 Oregon Legislature authorized the governing body of a city or county to impose a construction excise tax on new construction to fund Affordable Housing incentives and development programs through Senate Bill 1533 (2016), Chapter 59, Oregon Session Laws, 2016.

NOW THEREFORE, the City Council for the City of Hood River ordains that Title 15 (Building and Construction) of the Hood River Municipal Code is hereby amended by adding as a new chapter, Chapter 15.17 (Construction Excise Tax) set forth in Exhibit A, attached hereto and incorporated herein by this reference.

READ FOR THE FIRST TIME this 24 day of July 2017.

READ FOR THE SECOND TIME and adopted this 14 day of August 2017. This Ordinance shall take effect on the 31st day following the second reading.



Paul Blackburn, Mayor

Attest:

Approved as to Form:



Jennifer Gray, City Recorder
Daniel Kearns, City Attorney

Exhibit A

Chapter 15.17 – Construction Excise Tax

Sections:

- 15.17.015 Definitions
- 15.17.025 Levy of Tax
- 15.17.035 Exemptions
- 15.17.045 Interest
- 15.17.055 Appeals
- 15.17.065 Refunds
- 15.17.075 Use of Revenue
- 15.17.085 Administrative Fee
- 15.17.095 Forms and Regulations

15.17.015 Definitions. The following words and phrases as used in this chapter have the following meanings, unless the context clearly indicates a different meaning:

- A. "Affordable housing" means a housing unit for which a person earning 80% or less of area median income would not pay more than 33% of their gross income for housing payments.
- B. "Area median income" means Hood River County median household income by household size as defined by the United States Department of Housing and Urban Development and published periodically.
- C. "Building Department" means the Hood River Building Department or the City's contractor or agent that performs building plan review and building permit issuance.
- D. "Commercial and Industrial" means a structure designed or intended to be used, or actually used, for purposes other than residential purposes. Structures on land zoned Industrial or Commercial are presumed to be industrial or commercial.
- E. "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.
- F. "Improvement" means a permanent addition to real property or modification of an existing structure that results in any of the following: (a) a new structure, (b) additional square footage to an existing structure, or (c) addition of living space to an existing structure.
- G. "Partial exemption" means one-half (½) the percentage rate of the Construction Excise Tax.
- H. "Person" means an individual or any other legal entity, such a corporation, partnership or association, capable of exercising legal rights, obligations or owning property.
- I. "Project" means several individual building or trade permits and multiple improvements, in which case, the Construction Excise Tax shall be calculated based on the total value of all improvements associated with the project, regardless of the number of individual building or

trade permits. The project is deemed to be concluded upon final inspection or issuance of a certificate of occupancy.

- J. "Residential" means is any structure designed, intended or used as a dwelling. Structures on land zoned Residential are presumed to be residential.
- K. "Structure" means something constructed or built and having a fixed base on, or fixed to, the ground or to another structure.
- L. "Value" (of an improvement) means the value determined under the applicable guidelines employed by the City for processing building permit applications. For purposes of calculating the value of all improvements associated with a project that involves multiple permits and multiple improvements, the Construction Excise Tax shall be based on the total value of all improvements regardless of the number of separate building or trade permits involved.
- M. "City Manager" means the Hood River City Manager or the Manager's designee.

15.17.025 Levy of Tax. Unless subject to exemption under Section 15.17.035, each person who applies for a building permit for real property located in the City of Hood River shall pay a construction excise tax, as follows:

- A. Commercial or Industrial improvements shall be subject to and pay an excise tax in the amount of 1% of the value of the improvement.
- B. Residential improvements shall be subject to and pay an excise tax in the amount of 1% of the value of the improvement.
- C. Construction excise taxes levied under this section shall be due and payable prior to the issuance of any building permit by the Building Department for building permit issuance.
- D. Construction excise taxes may be paid by:
 - 1. The owner of the subject property; or
 - 2. Any agent of the property owner authorized to apply for a building permit on the property owner's behalf.
- E. The Building Department shall calculate the amount of excise tax due under this Chapter based on the documentation provided by the permit applicant at the time of issuance of building permits and shall be based on the total value of all improvements associated with the project regardless of the number of separate building or trade permits involved. The excise tax calculated as owing for each project shall be paid in full prior to issuance of building permits.

15.17.035 Exemptions.

- A. The construction excise tax shall not apply to any of the following improvements, which are exempt:
 - 1. Replacement residential structure with no net increase in living space.
 - 2. Non-living space located on residential property (e.g. shop buildings, garages).
 - 3. Accessory dwelling units, accessory farm dwellings, seasonal farm worker housing, and temporary hardship dwellings, as defined in applicable state law or City land use regulations.

4. Residential housing subject to deed restrictions requiring the property to remain affordable to households at or below 80% area median income for a period of at least 50 years following the date of the restriction.
 5. Private school, public or private hospital improvements.
 6. Public improvements as defined in ORS 279A.010.
 7. Improvements to religious facilities primarily used for worship or education associated with worship.
 8. Facilities operated by a not-for-profit corporation that are:
 - I. Long-term care facilities, as defined in ORS 442.015; or
 - II. Residential care facilities, as defined in ORS 443.400; or
 - III. Continuing care retirement communities, as defined in ORS 101.020.
 9. Any improvements that are exempt from the construction excise tax under state law.
- B. Partial exemption of 50% shall apply to residential housing that is subject to a deed restriction requiring that the property remain affordable to households that earn between 81% and 120% of the area median income for a period of at least 50-years following the date of the restriction.
- C. Any person seeking exemption shall provide information and documentation to the City sufficient to establish that the requested exemption is applicable and appropriate. The Building Department shall make the determination of eligibility for any exemption under this Chapter at the time of issuance of building permits as part of calculating the amount of excise tax due, based on the documentation provided by the permit applicant.
- D. In the event that a property receiving a full or partial exemption under this section as affordable housing is subsequently sold for an amount that no longer qualifies as affordable housing, the seller shall be liable for all of the following:
1. an amount equal to the applicable construction excise tax as of the time of the construction;
 2. interest on the tax at an annual rate of 12% from the date of the exemption; and
 3. a late fee equal to 5% of total applicable taxes and interest owing under this section.

15.17.045 Interest.

- A. Any unpaid portion of a construction excise tax shall bear interest at an annual rate of 12% until fully paid.
- B. Interest imposed under this section may not be waived.
- C. Accrued interest shall merge with and become part of the construction excise tax that is due.

15.17.055 Refunds.

- A. A person who paid an excise tax under this Chapter may apply for a full or partial refund of construction excise taxes paid, along with any applicable penalties or interest, in the following instances:
 1. The underlying improvements were eligible for an exemption under Section 15.17.035.

2. The building permit expired or was revoked prior to the initiation of the permitted construction, and the construction did not occur.
 3. The amount of taxes, penalties or interest were calculated in error.
- B. Upon satisfactory proof that a taxpayer qualifies for a refund under Subsection A, the City Manager shall order the refund of construction excise taxes and any applicable interest or penalties.
 - C. Within 30 days of a completed refund application, the City Manager shall:
 1. Refund the amount sought by the taxpayer; or
 2. Deny the refund request in whole or in part and provide a written explanation of the reasons why any portion of the requested refund is denied.
 - D. An application for a refund under this section must be made within one year from the date of payment. No refund request shall be accepted, considered or granted more than one year after the original excise tax is paid.

15.17.065 Appeals.

- A. Any determination of the amount of excise tax due under this Chapter or any claimed exemption shall be made by the Building Department prior to issuance of building permits based on documentation provided by the permit applicant. Refund decisions pursuant to Section 15.17.055 shall be made by the City Manager. All decisions rendered by the City under this Chapter may be appealed in writing to the City Manager within 14 calendar days of when the decision is made.
 1. Requests for review under this section shall be in writing and delivered to the City Manager together with any documentation supporting the moving party's position.
 2. Requests for review under this section must be made within 14 calendar days after of the written determination, after which, no appeal shall be accepted by the City Manager.
- B. Appeals filed under this section shall be decided by the City Manager, or the Manager's designee, within 14 calendar days of when the appeal is filed. The Manager's decision shall be in writing, based on the documentation provided by the permit applicant and any other interested party, including all documentation and information in the file from the City Building Department.
- C. The City Manager shall send by certified US Mail a copy of the final decision to the permit applicant and any other party that provided comment or documentation on the matter, including the Building Department and any buyer, seller or owner of the subject property known to the City.
- D. The Manager's written decision on any appeal filed under this Section shall be the City's final decision, subject to judicial review only pursuant to ORS 34.010 *et seq.*

15.17.075 Use of Revenue.

- A. Except funds withheld for administrative costs under Section 15.17.085, all construction excise taxes levied upon projects on commercial, industrial and mixed-use property under Section 15.17.025(A) shall be used in accordance with Subsections (C) and (D) herein; and

- B. Except funds withheld for administrative costs under Section 15.17.085, construction excise taxes levied upon projects on residential improvements under Subsections 15.17.025(B) and (C) shall be used as follows:
 - 1. 50% to fund developer incentives under subsection (C);
 - 2. 15% to the Oregon Housing and Community Services Department; and
 - 3. 35% to fund developer incentives and affordable housing programs under subsections (C) and (D), herein.
- C. The City may fund developer incentives allowed or offered pursuant to ORS 197.309(5)(c) and (d) and 197.309(7), including but not limited to:
 - 1. system development;
 - 2. land acquisition; and
 - 3. local public improvements required by municipal governments.
- D. The City may fund affordable housing programs in accordance with Section 9, Chapter 59, Oregon Laws 2016, including but not limited to:
 - 1. Rent buy-downs and subsidies; and
 - 2. Down-payment assistance; and
 - 3. Foreclosure-prevention assistance.
- E. Any affordable housing unit built or purchased with construction excise tax funds shall have recorded in its chain of title a deed restriction that requires that the property remain "affordable housing" as defined by this chapter, for a period of no less than 50 years from the date of restriction.
- F. The City is authorized to enter into a contract with the regional housing authority to carry out the purposes of this Section 15.17.075

15.17.085 Administrative Fee.

- A. As authorized by Sections 8 and 9 of Chapter 59, Oregon Session Laws, 2016, the City shall receive an administrative fee equal to 4% the gross construction excise taxes, without regard to subsequent reductions due to refunds, failed payments, or similar reductions.
- B. The City shall deduct the administrative fees directly from the collected construction excise taxes.
- C. The City may recover from the construction excise taxes any banking fees or penalties that arise from the collection of construction excise taxes such as returned check charges.

15.17.095 Forms and Regulations. The City Manager is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the Construction Excise Tax.