

**ORDINANCE NO. 5112**

**AN ORDINANCE AMENDING TITLE 3 OF THE MCMINNVILLE CITY CODE, ADOPTING AN AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX.**

**RECITALS:**

**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 (codified in ORS 320.170 to 320.195); and

**WHEREAS**, following passage of SB 1533, the McMinnville Affordable Housing Task Force, now the Affordable Housing Committee, evaluated whether to recommend approval of an Affordable Housing Construction Excise Tax to City Council, and evaluated parameters for a proposed Affordable Housing Construction Excise Tax. As part of a multi-year evaluation, they outreached to other cities, the development community, and housing organizations; and

**WHEREAS**, on October 20, 2021 the McMinnville Budget Committee provided a recommendation to City Council regarding a package of sustainable funding sources, including a recommendation for City Council to consider the Affordable Housing Construction Excise Tax; and

**WHEREAS**, on October 27, 2021, the McMinnville Affordable Housing Committee recommended adoption of the Affordable Housing Construction Excise Tax to City Council; and

**WHEREAS**, on November 17, 2021, the McMinnville City Council held a work session regarding the Affordable Housing Construction Excise Tax; and

**WHEREAS**, additional outreach was conducted with the development community on March 18, 2022 and April 1, 2022; and

**WHEREAS**, the City Council held a public hearing on April 26, 2022 to consider the Affordable Housing Construction Excise Tax, which was noticed in the News-Register on April 15; and

**WHEREAS**, the City Council having received the staff report, being fully informed about said request, and having deliberated;

**NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:**

1. That Title 3 of the McMinnville Municipal Code is amended as provided in Exhibit 'A', adding a new Chapter 3.30 "Affordable Housing Construction Excise Tax".

2. That at least five years and not more than six years after the effective date of this ordinance, the City Manager or designee shall prepare a report analyzing the impacts of the construction excise tax. Following the presentation of the report, the City Council may call for a public hearing to consider whether Chapter 3.30 should be repealed. Chapter 3.30 shall remain in effect unless repealed.
3. This Ordinance will take effect on July 1, 2022.

Passed by the McMinnville City Council this 26th day of April, 2022 by the following votes:

Ayes: Drabkin, Garvin, Geary, Menke, Peralta, Chenoweth

Nays: \_\_\_\_\_



\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:



\_\_\_\_\_  
City Attorney

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

EXHIBITS:

- A. Affordable Housing Construction Excise Tax

**Exhibit 'A' - to Ordinance No. 5112  
Affordable Housing Construction Excise Tax**

**Chapter 3.30 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX**

Sections:

- 3.30.010 Purpose
- 3.30.020 Definitions
- 3.30.030 Imposition of Tax
- 3.30.040 Exemptions
- 3.30.050 Collection of Tax
- 3.30.060 Statement of Full Value of improvement Required
- 3.30.070 Interest and Penalties
- 3.30.080 Refunds
- 3.30.090 Use of Revenue, Deed Restriction, and Annual Accounting
- 3.30.100 Administrative Fee
- 3.30.110 Appeal Procedure
- 3.30.120 Penalty
- 3.30.130 Review

**3.30.010 Purpose**

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

**3.30.020 Definitions**

The following definitions apply in this chapter.

**"Affordable housing"** means a housing unit for which a person earning 80% or less of area median income would not pay more than 30% of their gross income for housing payments.

**"Area Median Income"** means the Yamhill County median household income by household size as defined by the United State Department of Housing and Urban Development and published periodically.

**"Building Division"** means the McMinnville Building Division.

**"City Manager"** means the McMinnville City Manager or the Manager's designee.

**"Commercial"** means designed or intended to be used, or actually used, for other than residential purposes.

**"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.

**"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.

**"Housing units guaranteed to be affordable"** means a residential housing unit for which a deed restriction or contractual obligation guarantees that the housing will remain 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 area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.

**"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.

**"Net Revenue"** means revenues remaining after the administrative fees described in section 3.30.100 are deducted from the total construction excise tax collected.

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

**"Value of Improvement"** means the total value of the improvement as determined in the process of issuance of the building permit.

### **3.30.030 Imposition of Tax**

Unless subject to exemption under Section 3.30.040, each person who applies for a building permit for real property located in the City of McMinnville 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. 100% of the net revenue of the tax collected shall go towards affordable housing programs, after deducting the administrative fee as set forth in Subsection 100 of this chapter.
- B. Residential improvements shall be subject to and pay an excise tax in the amount of 1% of the permit valuation of the improvement. The tax collected shall go towards administration and affordable housing programs per ORS 320.195(3).
- C. The Building Division 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.
- D. The percentage rate of the construction excise tax shall not exceed that permitted by state law.
- E. 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.

### 3.30.040 Exemptions

- A. The following are exempt from the Affordable Housing Construction Excise Tax, which are specifically exempt under ORS 320.173:
1. Private school improvements.
  2. Public improvements as defined in ORS 279A.010 (Definitions for Public Contracting Code).
  3. 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 area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.
  4. Public or private hospital improvements.
  5. Improvements to religious facilities primarily used for worship or education associated with worship.
  6. Agricultural buildings, as defined in ORS 455.315 (Exemption of agricultural buildings, agricultural grading and equine facilities) (2)(a).
  7. Facilities that are operated by a not-for-profit corporation and that are:
    - a. Long term care facilities, as defined in ORS 442.015 (Definitions);
    - b. Residential care facilities, as defined in ORS 443.400 (Definitions for ORS 443.400 to 443.455); or
    - c. Continuing care retirement communities, as defined in ORS 101.020 (Definitions).
  8. Residential housing being constructed on a lot or parcel of land to replace residential housing on the lot or parcel of land that was destroyed or damaged by wildfire or another event or circumstance that is the basis for a state of emergency declared under ORS 401.165 or 401.309 or for the exercise of authority under ORS 476.510 to 476.610.
- B. The following are also exempt from the Affordable Housing Construction Excise Tax:
1. Any improvements that are now or hereafter exempt from the construction excise tax under state law.
  2. Any improvement funded by Construction Excise Tax proceeds, or other dedicated affordable housing funding through the City of McMinnville. Such exemption is limited to the amount of the city's investment in the improvement unless the improvement is otherwise exempt under Subsection (A) of this Section.
  3. Accessory non-living space located on residential property (e.g., shop buildings, garages, unenclosed covered patios and decks, etc.)
- C. 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.
- D. In the event that a property receiving an 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.

### **3.30.050 Collection of Tax**

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.

### **3.30.060 Statement of Full Value of Improvement Required**

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.

### **3.30.070 Interest and Penalties**

- A. Except for payments due pursuant to Section 3.30.040(D) above, 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 15th day of the month following the date of the payment. Interest amounts may not be waived. 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 3.30.040(A)(3).
  2. Any underpayment involving a failure to state or an understatement of the full value of improvements. 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.

### **3.30.080 Refunds**

- A. The City shall issue a refund to the owner listed on the permit for which a tax was assessed and paid, in the amount of the tax actually paid, under the following circumstances:
  1. If the taxpayer establishes that the tax was paid for improvements that were otherwise eligible for an exemption under section 3.30.040.
  2. If the taxpayer establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the Planning Department.
- 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. Such decision is subject to the appeals provisions in 3.30.110.

- C. Any request for refund must be initiated within one year from the date of payment.

### **3.30.090 Use of Revenue, Deed Restriction, and Annual Accounting**

- A. Except for funds withheld for administrative costs under Section 3.30.100, all construction excise taxes levied upon projects on commercial, industrial and mixed-use property under Section 3.30.030A shall be used in accordance with Subsections (C) and (D) herein; and
- B. Except for funds withheld for administrative costs under Section 3.30.100, construction excise taxes levied upon projects on residential improvements under Subsection 3.30.030(B) shall be used as follows:
  - 1. 50% to fund developer incentives under subsection (C);
  - 2. 15% to the Oregon Housing and Community Services Department to fund home ownership programs that provide down payment assistance; 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/or
  - 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;
  - 2. Down-payment assistance; and/or
  - 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 60 years from the date of restriction.
- F. 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.

### **3.30.100 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 receipt of 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.

**3.30.110 Appeal Procedure**

- A. Any written determination issued by the Planning 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.
- 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 receiving an appeal under subsection B, the City Manager shall schedule the appeal to be heard by the Council, and provide 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.

**3.30.120 Penalty**

Violation of this chapter is a civil infraction.