

CITY OF NEWPORT

ORDINANCE NO. 2221

AN ORDINANCE AMENDING CHAPTER 3.20 OF TITLE III  
OF THE NEWPORT MUNICIPAL CODE RELATED TO THE  
ALLOCATION AND DISTRIBUTION OF AFFORDABLE HOUSING  
CONSTRUCTION EXCISE TAX REVENUE

(Newport File No. 1-MISC-23)

**Findings:**

1. On August 7, 2017, the Newport City Council adopted Ordinance No. 2114, an ordinance that enacted Chapter 3.20 of Title III of the Newport Municipal Code (NMC), establishing an affordable housing excise tax on new construction.
2. The City of Newport has; thereafter, collected a construction excise tax on new residential, commercial and industrial development with revenues being accounted for in accordance with limitations that state law imposes on residential collections, with 50 percent targeted to development incentives for affordable housing, 35 percent being directed to a flexible fund for other affordable housing programs, and 15 percent going to Oregon Housing and Community Services to fund homebuyer down payment assistance programs.
3. Having collected construction excise tax revenues for more than five years, the City is in a position where it can gauge anticipated annual receipts and begin to distribute funds that must be used as development incentives in a sustainable, and programmatic manner.
4. With Resolution No. 3787, the City Council directed that a work group be formed to determine how to distribute the collected funds, with such work group being the Project Advisory Committee that the Council appointed to assist with preparation of the Newport Housing Production Strategy.
5. The Newport Housing Production Strategy, adopted May 15, 2023 (Resolution No. 3978) and supported by the Project Advisory Committee, includes a number of follow-up action items, one of which, Item #D, calls for the City to adjust how it allocates its revenues to maximize funding available for flexible use to address housing needs, and to begin distributing funds for affordable housing incentives in a programmatic manner to support market-rate multi-family development. The following steps are being taken to implement Action Item #D:
  - A. Commercial and industrial construction excise tax collections, including those received to date, will be placed in the same flexible pool of funds that 35 percent of the residential collections must be directed, to give policy-makers the maximum amount of leeway to fund a range of affordable housing initiatives. It is possible for

the City to take such action because state law is more permissive with respect to the use of commercial and industrial construction excise tax revenues, with 50% having to be used for housing-related programs and the other 50% being unrestricted.

B. Subject to the availability of funds, net construction excise tax revenue from residential improvements, segregated for use as development incentives, is to be made available to buy down the building permit and plan review fees for multi-family development projects that produce a minimum of 20-units, where such units are affordable to households with incomes equal to or higher than 80 percent of the area median income. Half of the residential construction excise tax revenues must be used to fund development incentives for “affordable housing” as the term is defined in ORS 197A.465 (formerly 197.309), which is households with incomes equal to or higher than 80% median area income. The statute restricts the incentives to those that relate to inclusionary zoning (which the City is not doing) or voluntary incentives that (a) increase the number of affordable housing units in a development; (b) decrease the sale or rental price of affordable housing units in a development; or (c) build affordable housing units that are affordable to households with incomes equal to or lower than 80 percent of median area income. It is impractical to implement options (b) or (c), as they require active tracking that the city would have a difficult time carrying out with existing resources. Additionally, it is unlikely that available revenue would make these options attractive. Therefore, the method of distributing funds is being tailored to implement option (a), under the premise that additional units will necessarily result from developments of this scale over time.

6. Implementing these changes necessitates amendments to Chapter 3.20 of Title III of the Newport Municipal Code (NMC) in the manner outlined in Exhibit A. Further, the amendments include one additional set of changes to clarify that affordable housing projects where at least half of the units are made available to own or rent to families with incomes of 60 percent or less of the area median income are exempt from having to pay the affordable housing excise tax. That is the intent of the existing language, it is just awkwardly structured and difficult to read.

7. The Newport Planning Commission considered the proposed amendments at its November 13, 2023 meeting and, after due deliberation, passed a motion recommending the City Council adopt the changes.

8. The City Council held a public hearing on March 4, 2024 regarding the question of the proposed amendments, and, after considering the recommendation of the Planning Commission and evidence and argument in the record, adopted the ordinance as necessary and in furtherance of the general welfare of the community.

9. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

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

**Section 1.** Findings. The findings set forth above are hereby adopted in support of the amendments to Chapter 3.20 of Title III of the Newport Municipal Code adopted by Section 2 of this Ordinance.

**Section 2.** Municipal Code Amendment. Chapter 3.20 of Title III of the Newport Municipal Code is hereby amended as set forth in Exhibit "A".

**Section 3.** Effective Date. This ordinance shall take effect 30 days after adoption.

Date adopted and read by title only: March 4, 2024

Signed by the Mayor on March 5, 2024.

  
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Jan Kaplan, Mayor

ATTEST:  
  
\_\_\_\_\_  
Erik Glover, Asst. City Manager/City Recorder

(New language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~.)

## CHAPTER 3.20 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

### 3.20.005 Purpose

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

### 3.20.015 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.

### 3.20.020 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.

### 3.20.025 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. Affordable housing projects that satisfy the following:
  - a. each unit is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or
  - b. at least half of the units that are made available to own or rent to families with incomes of 60 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development, is equal to or greater than the average number of units in the project.
  - c. Affordability under either of the above metrics is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.
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.
9. Any other exemption required by Oregon statute.
10. 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.

### 3.20.030 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.

### 3.20.035 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.

### 3.20.040 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.

### 3.20.045 Interest and Penalties

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.

- 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 3.20.025(A)(8).

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.

### 3.20.050 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 3.20.025.
  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.

### 3.20.055 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 tax 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. In circumstances where state law does not set specific obligations on the use of revenues, then the City Council may, by resolution, establish how the revenues are to be used.
- 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.
- D. Subject to the availability of funds, net construction excise tax revenue from residential improvements, segregated for use as development incentives, are to be made available to buy down the building permit and plan review fees for multi-family development producing a minimum of 20-units, where such units are affordable to households with incomes equal to or higher than 80 percent of the area median income.

### 3.20.060 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.
- 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.

### 3.20.065 Penalty

Violation of this chapter is a civil infraction.