



PLANNING COMMISSION WORK SESSION AGENDA

Monday, November 13, 2023 - 6:00 PM

City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or e.glover@newportoregon.gov.

All meetings are live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER

Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, John Updike, Marjorie Blom, Dustin Capri, and Greg Sutton.

2. NEW BUSINESS

2.A Review Draft Affordable Housing CET Code Amendments.

Memorandum

Housing Production Strategy Excerpts

Draft Amendments to NMC Chapter 3.20

SB 1533 Enrolled

Relevant ORS Provisions

Example Impact of the Incentives

Housing Fund Summary FYE 18-22.pdf

2.B Establishing a Custom Creative Work Light-Industrial Use Category.

Memorandum

Draft Amendments to NMC Chapter 14.03

Coastal Arts Guild Proposal

Email from the Nye Neighbors

Zoning Map

Carol Shenk Email - 11-13-2023

Janet Webster Email - 11-13-2023

2.C HB 2984- Commercial to Residential Conversions.

Memorandum

HB 2984 Enrolled

NMC Chapter 12.15, System Development Charges

3. UNFINISHED BUSINESS

3.A Planning Commission Work Program Update.

PC Work Program 11-9-23

4. ADJOURNMENT

Memorandum

To: Planning Commission/Commission Advisory Committee

From: Derrick Tokos, Community Development Director 

Date: November 9, 2023

Re: Review Draft Affordable Housing CET Code Amendments

The City of Newport established a construction excise tax in 2017 and has tracked collection of the revenues over the last five years. Action Item D in the recently adopted Housing Production Strategy (HPS) calls for the City to adjust how it allocates the tax to maximize its flexibility, which can be done by Council resolution, and to begin distributing funds for affordable housing incentives in a programmatic manner to support market-rate multi-family development. These amendments focus on the second point. Relevant pages from the HPS are enclosed with the pertinent language highlighted.

Attached is a draft set of revisions to Newport Municipal Code (NMC) Chapter 3.20 that we briefly reviewed at your last work session. SB 1533 (2016) gave cities the authority to charge construction excise taxes for affordable housing. With respect to residential collections, the City of Newport is required to reserve 50% for development incentives. Section 9(3) of the senate bill notes that the development incentives must comport with the options outlined in ORS 197.309(5)(c) and (d) and (7). Attached is a copy of the bill, with the relevant language highlighted.

Incentives under ORS 197.309(5)(c) and (d) relate to inclusionary zoning, which the City is not doing, so the only viable options are those under 197.309(7), which:

- (a) increase the number of affordable housing units in a development; or
- (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.

A copy of the relevant statute is enclosed with the key provisions highlighted. It should be noted that, for the purpose of this statute, "affordable housing" means housing that is affordable to households with incomes equal to or higher than 80 percent of median area income. Thus, the focus on incentivizing market-rate apartment construction.

Options (b) and (c) under the statute 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 proposed amendments are intended to implement option (a), with the premise that additional affordable units will necessarily result from developments of this scale over time. Subsidized housing does not have to pay excise

taxes, so their upfront costs are substantially lower than market-rate. This approach reduces the burden somewhat on market-rate rentals, which are also part of the portfolio of needed housing. One change to the approach that was previously presented is that the draft amendments now call for the incentive to be a buy down of the building permit and plan review fees. This is more straightforward than trying to buy down system development charges or construction excise taxes given how those types of revenues have to be allocated. Attached is a summary of the construction excise tax collections over the last five years and the fee comparison shared at the last meeting. On the fee comparison, I added in the impact that it would have had on the Wyndhaven Phase II project. It shows that the draw down on the fund attributed to full payment of the building permit/plan review fees is likely sustainable given that some of that is paid back via the project's affordable housing construction excise tax payment.

The other change in the draft amendments is a clarification of one of the exemptions, where the existing language is difficult to interpret.

If the Planning Commission is comfortable with the revisions, then it can make a motion to recommend the changes be presented to the City Council at an upcoming meeting. Such a motion should be offered at a regular session.

Attachments

- Housing Production Strategy Excerpts
- Draft Amendments to NMC Chapter 3.20
- SB 1533 Enrolled
- Relevant ORS Provisions
- Example Impact of the Incentives
- Summary of CET Collections through FY 2021/2022

Exhibit 13. Implementation Schedule

Actions	2023	2024	2025	2026	2027	2028	2029	2030	2031	
A. Use Urban Renewal to support housing and infrastructure development	Ongoing implementation of existing URA						Evaluate changes to URA or feasibility study for new district; Potential Official Action by City Council end of 2031			
B. Implement the Homebuyer Opportunity Limited Tax Exemption			Adoption	Implementation						
C. Reduce development code barriers to housing development		Adoption	Implementation							
D. Adjust the allocation of the Construction Excise Tax to support affordable housing development		Official City Council Action	Implementation							
E. Lobby the Legislature for more resources to support housing development and remove regulatory barriers to housing development	Ongoing City Council will discuss and review annually									
F. Establish a low-barrier emergency shelter and warming center in Newport	Development and opening of facility by end of 2026				Implementation					
G. Support development of a regional housing entity focused on low- and moderate-income housing development				Ongoing local and regional discussions	Official City Council Action	Implementation				
H. Participate in the regional homelessness action plan	Plan Development		5-Year Plan Implementation							
I. Pay System Development Charges (SDC) for workforce housing	Develop Distribution Plan		Implementation							
J. Grow partnerships with Community Land Trusts	Ongoing; Will require City Council action for specific projects as needed City Council will discuss and review annually									
K. Support outreach and education to promote equitable housing access	Ongoing, likely to focus on involvement for actions such as B, C, D, F, G, H, I, and M.									
L. Pursue an Urban Growth Management Agreement (UGMA) with the County				Adoption	Implementation					
M. Research rental housing maintenance code feasibility		Adoption								

D. Adjust the Allocation of the Construction Excise Tax (CET) to support affordable housing development

Rationale

CET is one of few options to generate additional, locally controlled funding for affordable housing. It is a flexible funding source, especially for funds derived from commercial/industrial development and offers the ability to link industrial or other employment investments, which generate new jobs and demand for new housing, with funding for housing development.

Description

The City adopted a Construction Excise Tax (CET) in 2017, which is levied on new residential, commercial, and industrial development. The City charges the maximum allowed by State law for new residential development (1% of the permit valuation) as well as 1% of commercial and industrial permit values.¹¹ The CET has created a dedicated source of funding for affordable housing in Newport, which collected a little more than \$540,000 since its inception.

The allowed uses for CET funding are defined by state statute:

- The City may retain up to 4% of funds to cover administrative costs. The funds remaining must be allocated as follows, depending on whether the CET is on residential or commercial and industrial development.
- For a residential CET:
 - 50% must be used for developer incentives for multifamily housing. These incentives could include City payment of permit fees and SDCs for development, tax abatements, or finance-based incentives. The City may use the CET to fund voluntary developer incentives that:
 - Increase the number of affordable housing units in a development
 - Decrease the sale or rental price of affordable housing units in a development
 - Build affordable housing units that are affordable to households with incomes equal to or lower than 80% of MFI.¹²
 - 35% may be used flexibly for affordable housing programs, as defined by the jurisdiction.
 - 15% flows to Oregon Housing and Community Services for homeownership programs that provide down payment assistance in Newport
- The State allows for more flexible use of commercial/industrial CET:
 - 50% of the funds must be used for housing-related programs, as defined by the jurisdiction (note that these funds are not necessarily limited to affordable housing).
 - The remaining 50% is unrestricted.

The City currently allocates all CET funds toward affordable housing according to the percentages required for the residential CET. However, the City has not fully determined how to spend its CET funds, only spending: (1) the 15% of funds that flows to Oregon Housing and Community Services for homeownership programs and (2) matching state funding to Proud Ground for down payment assistance grants. The City had a balance of about \$540,000 beginning Fiscal Year 2022.

¹¹ There is no cap on the rate applied to commercial and industrial construction.

¹² Based on information in ORS 197.309(7).

Currently CET funds are designated for the following uses:

	Current Allocations of Residential CET funds	Current Allocations for Commercial and Industrial CET funds	Total
Affordable Housing – Flexible Use (35%)	\$159,096	\$23,517	\$182,613
OHCS Down Payment Assistance (15%)	\$68,118	\$10,763	\$78,881
Affordable Housing – Restricted to developer incentives (50%)	\$226,047	\$34,641	\$260,688
Total	\$453,261	\$68,921	\$522,182

The City needs to decide:

- **How to spend the existing funds.** These funds could be used to backfill SDC costs or development fees for housing affordable to households with incomes of 80% to 120% of MFI. Some of these funds could be spent on programs to address homelessness, like establishing a low-barrier emergency shelter. There are many other ways that these funds could be spent for affordable housing.
- **Should the City spend commercial/industrial CET differently than residential CET.** The City should consider changing how to spend the funds from the commercial/industrial CET, which constituted about 13% of collections between 2017 and 2022, to dedicate more funds for flexible use. This would allow the City to spend on specific housing priorities, like establishing a low-barrier emergency shelter, supporting affordable homeownership as part of a community land trust, or other priorities. Based on collections between 2017 and 2022, this would have generated about \$69,000 for flexible use.

In the “Potential Allocation” example below, the change from the City’s current allocation is allocating all the commercial and industrial CET to the Affordable Housing Flexible Use category.

CET Collections Scenario (using CET collections between 2017 and 2022)

	Current CET Allocations (residential and commercial/ industrial)	Potential Allocation (with all commercial/ industrial CET to flexible use fund)	Change
Affordable Housing – Flexible Use (35%)	\$182,613	\$228,017	\$45,404
OHCS Down Payment Assistance (15%)	\$78,881	\$68,118	(\$10,763)
Affordable Housing – Restricted to developer incentives (50%)	\$260,688	\$226,047	(\$34,641)

City Role

The City would implement the plans for using CET funds for affordable housing development. Given the pace of collections, it may be advisable to allow them to accrue for a few years between periods when they are used.

Anticipated Impacts

Populations Served	Income	Housing Tenure	Magnitude of New Units Produced
Extremely low-, very low-, low- and moderate-income households	0-120% MFI	Renter and Owner	Moderate

Potential Risks

Since the revenue is generated from building permits, when new development activity slows, less revenue is collected.

Implementation Steps

- Adjust the allocation of the commercial/industrial CET funds to be used in the affordable housing flexible use fund. This would give the City flexibility to spend the funds on specific housing priorities, like establishing a low-barrier emergency shelter, supporting affordable homeownership as part of a community land trust, or other priorities.
- Use CET flexible funds on an as-needed basis to leverage other opportunities, recognizing the pace of accrual of funds over time.
- **Begin to distribute funds for affordable housing incentives in a programmatic manner to support market-rate multifamily development based on policy direction from the City Council.**
- Continue to partner with land trusts or organizations that offer similar services for affordable homeownership to fully leverage the CET funds that go to OHCS for down payment assistance.

Implementation Timeline

Timeline for Adoption	Implementation to Commence	Timeframe of Impact
Official City Council Action by December 2024	2025	Ongoing

Funding or Revenue Implications

CET funding relies on an active construction cycle and, as such, fluctuates from year to year. Can only be used for capital projects. Funds can be used for preservation or for new construction.

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with strikethrough. Staff comments, in italics, are for context and are not a part of the revisions.)

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.

Staff: CET exemptions are listed in ORS 320.173. The City can be more generous, and the language in Subsection 7 above is just that, as the statutory exemption for projects where all units are under 80 percent median area income requires that they be

guaranteed at that income level for at least 60 years. The City requires only a 30 year guarantee. The City also allows projects that make units available under 60 percent of median area income to also offer market rate units as part of the development. The existing language is difficult to interpret, and the above edits clarify the benchmark if units are to be made available at less than 60 percent median area income. Subsections 7 and 10 above are the only ones that deviate from the statutory exemptions.

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 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 3.20.025(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 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.
- D. Subject to the availability of funds, net construction excise tax revenue from residential improvements shall be used to offset 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.

Staff: The residential construction excise tax must be used to fund development incentives for Affordable Housing as the term is defined in ORS 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.

Options (b) and (c) 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, this language has been added to implement option (a), with the premise that additional units will necessarily result from developments of this scale over time. Subsidized housing does not have to pay excise taxes, so their upfront costs are substantially lower than market rate. This approach reduces the burden somewhat on market rate rentals, which are also part of the portfolio of needed housing.

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.

DRAFT

Enrolled
Senate Bill 1533

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce and General Government)

CHAPTER

AN ACT

Relating to affordable housing; creating new provisions; amending ORS 197.309, 320.170, 320.176 and 320.186 and section 1, chapter 829, Oregon Laws 2007; repealing section 9, chapter 829, Oregon Laws 2007; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.309 is amended to read:

197.309. (1) **As used in this section:**

(a) **“Affordable housing” means housing that is affordable to households with incomes equal to or higher than 80 percent of the median family income for the county in which the housing is built.**

(b) **“Multifamily structure” means a structure that contains three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit within the same structure.**

[(1)] (2) Except as provided in subsection [(2)] (3) of this section, a [city, county or] metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178[,] a requirement, that has the effect of establishing the sales **or rental** price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale **or rent** to [any] a particular class or group of purchasers **or renters**.

[(2)] (3) [This] **The provisions of subsection (2) of this section [does] do** not limit the authority of a [city, county or] metropolitan service district to:

(a) Adopt or enforce a [land] use regulation, [functional plan] provision or [condition of approval] **requirement** creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or [condition] **requirement** designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

(4) **Notwithstanding ORS 91.225, a city or county may adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178 a requirement, that has the effect of establishing the sales or rental price for a new multifamily structure, or that requires a new multifamily structure to be designated for sale or rent as affordable housing.**

(5) **A regulation, provision or requirement adopted or imposed under subsection (4) of this section:**

(a) May not require more than 20 percent of housing units within a multifamily structure to be sold or rented as affordable housing;

(b) May apply only to multifamily structures containing at least 20 housing units;

(c) Must provide developers the option to pay an in-lieu fee, in an amount determined by the city or county, in exchange for providing the requisite number of housing units within the multifamily structure to be sold or rented at below-market rates; and

(d) Must require the city or county to offer a developer of multifamily structures, other than a developer that elects to pay an in-lieu fee pursuant to paragraph (c) of this subsection, at least one of the following incentives:

(A) Whole or partial fee waivers or reductions.

(B) Whole or partial waivers of system development charges or impact fees set by the city or county.

(C) Finance-based incentives.

(D) Full or partial exemption from ad valorem property taxes on the terms described in this subparagraph. For purposes of any statute granting a full or partial exemption from ad valorem property taxes that uses a definition of "low income" to mean income at or below 60 percent of the area median income and for which the multifamily structure is otherwise eligible, the city or county shall allow the multifamily structure of the developer to qualify using a definition of "low income" to mean income at or below 80 percent of the area median income.

(6) A regulation, provision or requirement adopted or imposed under subsection (4) of this section may offer developers one or more of the following incentives:

(a) Density adjustments.

(b) Expedited service for local permitting processes.

(c) Modification of height, floor area or other site-specific requirements.

(d) Other incentives as determined by the city or county.

(7) Subsection (4) of this section does not restrict the authority of a city or county to offer developers voluntary incentives, including incentives to:

(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.

(c) Build affordable housing units that are affordable to households with incomes equal to or lower than 80 percent of the median family income for the county in which the housing is built.

(8)(a) A city or county that adopts or imposes a regulation, provision or requirement described in subsection (4) of this section may not apply the regulation, provision or requirement to any multifamily structure for which an application for a permit, as defined in ORS 215.402 or 227.160, has been submitted as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application has been submitted to the city or county prior to the effective date of the regulation, provision or requirement.

(b) If a multifamily structure described in paragraph (a) of this subsection has not been completed within the period required by the permit issued by the city or county, the developer of the multifamily structure shall resubmit an application for a permit, as defined in ORS 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application under the regulation, provision or requirement adopted by the city or county under subsection (4) of this section.

(9)(a) A city or county that adopts or imposes a regulation, provision or requirement under subsection (4) of this section shall adopt and apply only clear and objective standards, conditions and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay.

(b) Paragraph (a) of this subsection does not apply to:

(A) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(B) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(c) In addition to an approval process for affordable housing based on clear and objective standards, conditions and procedures as provided in paragraph (a) of this subsection, a city or county may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(A) The developer retains the option of proceeding under the approval process that meets the requirements of paragraph (a) of this subsection;

(B) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(C) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in paragraph (a) of this subsection.

(10) If a regulation, provision or requirement adopted or imposed by a city or county under subsection (4) of this section requires that a percentage of housing units in a new multifamily structure be designated as affordable housing, any incentives offered under subsection (5)(d) or (6) of this section shall be related in a manner determined by the city or county to the required percentage of affordable housing units.

SECTION 2. ORS 320.170 is amended to read:

320.170. (1) [*Construction taxes may be imposed by*] A school district, as defined in ORS 330.005, **may impose a construction tax only** in accordance with ORS 320.170 to 320.189.

(2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179, by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code.

SECTION 3. Section 1, chapter 829, Oregon Laws 2007, is added to and made a part of ORS 320.170 to 320.189.

SECTION 4. Section 1, chapter 829, Oregon Laws 2007, is amended to read:

Sec. 1. (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189.**

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189**, construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189** and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income.

SECTION 5. ORS 320.176 is amended to read:

320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*] **by a school district pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, "construction cost index" means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

SECTION 6. ORS 320.186 is amended to read:

320.186. A school district may pledge construction taxes **imposed pursuant to ORS 320.170** to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183.

SECTION 7. Sections 8 and 9 of this 2016 Act are added to and made a part of ORS 320.170 to 320.189.

SECTION 8. (1) The governing body of a city or county may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of this section and section 9 of this 2016 Act.

(2)(a) A tax may be imposed on improvements to residential real property that result in a new residential structure or additional square footage in an existing residential structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate of the tax. The tax may not exceed one percent of the permit valuation for residential construction permits issued by the city or county either directly or through the Building Codes Division of the Department of Consumer and Business Services.

(3)(a) A tax may be imposed on improvements to commercial and industrial real property, including the commercial and industrial portions of mixed-use property, that result in a new structure or additional square footage in an existing structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate and base of the tax.

(4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS 320.189 to the city or county that imposed the tax.

(5)(a) This section and section 9 of this 2016 Act do not apply to a tax described in section 1 (2), chapter 829, Oregon Laws 2007.

(b) Conformity of a tax imposed pursuant to this section by a city or county to the requirements of this section and section 9 of this 2016 Act shall be determined without regard to any tax described in section 1 (2), chapter 829, Oregon Laws 2007, that is imposed by the city or county.

SECTION 9. (1) As soon as practicable after the end of each fiscal quarter, a city or county that imposes a construction tax pursuant to section 8 of this 2016 Act shall deposit the construction tax revenues collected in the fiscal quarter just ended in the general fund of the city or county.

(2) Of the revenues deposited pursuant to subsection (1) of this section, the city or county may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the city or county incurred in complying with this section.

(3) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use the remaining revenues received under section 8 (2) of this 2016 Act as follows:

(a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309 (5)(c) and (d) and (7);

(b) Fifteen percent to be distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance; and

(c) Thirty-five percent for programs and incentives of the city or county related to affordable housing as defined by the city or county, respectively, for purposes of this section and section 8 of this 2016 Act.

(4) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use 50 percent of the remaining revenues received under section 8 (3) of this 2016 Act to fund programs of the city or county related to housing.

SECTION 10. Section 9, chapter 829, Oregon Laws 2007, is repealed.

SECTION 11. A city or county may not adopt a regulation, provision or requirement under ORS 197.309, as amended by section 1 of this 2016 Act, until the 180th day after the effective date of this 2016 Act.

SECTION 12. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by Senate February 26, 2016

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 3, 2016

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

.....
Jeanne P. Atkins, Secretary of State

197.309 Local requirements to develop affordable housing. (1) As used in this section:

(a) "Affordable housing" means housing that is affordable to households with incomes equal to or higher than 80 percent of the median family income for the county in which the housing is built.

(b) "Multifamily structure" means a structure that contains three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit within the same structure.

(2) Except as provided in subsection (3) of this section, a metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178 a requirement, that has the effect of establishing the sales or rental price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale or rent to a particular class or group of purchasers or renters.

(3) The provisions of subsection (2) of this section do not limit the authority of a metropolitan service district to:

(a) Adopt or enforce a use regulation, provision or requirement creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or requirement designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

(4) Notwithstanding ORS 91.225, a city or county may adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178 a requirement, that has the effect of establishing the sales or rental price for a new multifamily structure, or that requires a new multifamily structure to be designated for sale or rent as affordable housing.

(5) A regulation, provision or requirement adopted or imposed under subsection (4) of this section:

(a) May not require more than 20 percent of housing units within a multifamily structure to be sold or rented as affordable housing.

(b) May apply only to multifamily structures containing at least 20 housing units.

(c) Must provide developers the option to pay an in-lieu fee, in an amount determined by the city or county, in exchange for providing the requisite number of housing units within the multifamily structure to be sold or rented at below-market rates.

(d) Must require the city or county to offer a developer of multifamily structures, other than a developer that elects to pay an in-lieu fee pursuant to paragraph (c) of this subsection, at least one of the following incentives:

(A) Whole or partial fee waivers or reductions.

(B) Whole or partial waivers of system development charges or impact fees set by the city or county.

(C) Finance-based incentives.

(D) Full or partial exemption from ad valorem property taxes on the terms described in this subparagraph.

For purposes of any statute granting a full or partial exemption from ad valorem property taxes that uses a definition of "low income" to mean income at or below 60 percent of the area median income and for which the multifamily structure is otherwise eligible, the city or county shall allow the multifamily structure of the developer to qualify using a definition of "low income" to mean income at or below 80 percent of the area median income.

(e) Does not apply to a CCRC, as defined in ORS 101.020, that executes and records a covenant with the applicable city or county in which the CCRC agrees to operate all units within its structure as a CCRC. Units within a CCRC that are offered or converted into residential units that are for sale or rent and are not subject to ORS chapter 101 must comply with regulations, provisions or requirements adopted by the city or county that are consistent with those applicable to a new multifamily structure under subsection (3) or (4) of this section.

(6) A regulation, provision or requirement adopted or imposed under subsection (4) of this section may offer developers one or more of the following incentives:

(a) Density adjustments.

(b) Expedited service for local permitting processes.

(c) Modification of height, floor area or other site-specific requirements.

(d) Other incentives as determined by the city or county.

(7) Subsection (4) of this section does not restrict the authority of a city or county to offer developers voluntary incentives, including incentives to:

(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.

(c) Build affordable housing units that are affordable to households with incomes equal to or lower than 80 percent of the median family income for the county in which the housing is built.

(8)(a) A city or county that adopts or imposes a regulation, provision or requirement described in subsection (4) of this section may not apply the regulation, provision or requirement to any multifamily structure for which an application for a permit, as defined in ORS 215.402 or 227.160, has been submitted as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application has been submitted to the city or county prior to the effective date of the regulation, provision or requirement.

(b) If a multifamily structure described in paragraph (a) of this subsection has not been completed within the period required by the permit issued by the city or county, the developer of the multifamily structure shall resubmit an application for a permit, as defined in ORS 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application under the regulation, provision or requirement adopted by the city or county under subsection (4) of this section.

(9)(a) A city or county that adopts or imposes a regulation, provision or requirement under subsection (4) of this section shall adopt and apply only clear and objective standards, conditions and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay.

(b) Paragraph (a) of this subsection does not apply to:

(A) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(B) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(c) In addition to an approval process for affordable housing based on clear and objective standards, conditions and procedures as provided in paragraph (a) of this subsection, a city or county may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(A) The developer retains the option of proceeding under the approval process that meets the requirements of paragraph (a) of this subsection;

(B) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(C) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in paragraph (a) of this subsection.

(10) If a regulation, provision or requirement adopted or imposed by a city or county under subsection (4) of this section requires that a percentage of housing units in a new multifamily structure be designated as affordable housing, any incentives offered under subsection (5)(d) or (6) of this section shall be related in a manner determined by the city or county to the required percentage of affordable housing units. [1999 c.848 §2; 2007 c.691 §8; 2016 c.59 §1; 2019 c.412 §1]

320.173 Exemptions. Construction taxes may not be imposed on the following:

- (1) Private school improvements.
- (2) Public improvements as defined in ORS 279A.010.
- (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 (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;
 - (b) Residential care facilities, as defined in ORS 443.400; or
 - (c) Continuing care retirement communities, as defined in ORS 101.020.
- (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. [2007 c.829 §3; 2009 c.534 §2; 2021 c.361 §1]



SAMPLE IMPACT FEE ASSESSMENT FOR RESIDENTIAL DEVELOPMENT (2023)

101-131 NE 60th St. - 110 Units Affordable (2019)



Building Fees:
\$89,642.93

SDC Fee:
\$283,045.82
- \$123,685.21
(Wilder Credit Transfer)

School CET:
\$0

Affordable
Housing CET:
\$0

Total Cost:
\$249,003.54

410 480 NE 31st St. - 78 Units Market Rate (2022)

Building Fees:
\$122,352.35

SDC Fee:
\$283,034.71

School CET:
\$108,836.44

Affordable
Housing CET:
\$169,068.50

Total Cost:
\$683,292.00

Total Cost with Change in Effect:

\$683,292.00
- 122,352.35
- \$560,939.65

Net Impact to 50% CET Reserved for
Housing Development Incentives:

\$122,352.35
- \$84,534.25
\$37,818.10

50% from Current Project
Fund Drawdown

Newport Housing Funds - Revenue by Type

	<u>2017-2018</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>	<u>2021-2022</u>	<u>Total</u>
CET Affordable Housing Admin (Acct #101-1900-46429)						
Residential Use (Res)	\$2,247	\$1,647	\$1,315	\$5,302	\$8,477	\$18,988
Commercial/Industrial Use (Com)	\$289	\$520	\$1,148	\$449	\$399	\$2,805
Total Revenue	<u>\$2,536</u>	<u>\$2,167</u>	<u>\$2,463</u>	<u>\$5,751</u>	<u>\$8,876</u>	<u>\$21,793</u>

Housing Fund 212

Affordable Housing General (Dept 4710) - 35% of Collections less Administrative Fee)

Revenue

CET Affordable Housing - Flexible Use (Res)	\$18,426	\$13,875	\$11,048	\$44,544	\$71,204	\$159,096
CET Affordable Housing - Flexible Use (Com)	\$2,371	\$4,381	\$9,641	\$3,768	\$3,355	\$23,517
Total Revenue	<u>\$20,797</u>	<u>\$18,256</u>	<u>\$20,689</u>	<u>\$48,312</u>	<u>\$74,559</u>	<u>\$182,613</u>

Oregon Housing and Community Services (Dept 4720) - 15% of Collections less Administrative Fee)

Revenue

CET OHCS Down Payment Assistance (Res)	\$6,868	\$5,987	\$5,656	\$19,090	\$30,516	\$68,118
CET OHCS Down Payment Assistance (Com)	\$884	\$1,891	\$4,936	\$1,615	\$1,438	\$10,763
Total Revenue	<u>\$7,752</u>	<u>\$7,878</u>	<u>\$10,592</u>	<u>\$20,705</u>	<u>\$31,954</u>	<u>\$78,881</u>

Affordable Housing Development Incentives (Dept 4730) - 50% of Collections less Administrative Fee)

Revenue

CET Affordable Housing - Restricted (Res)	\$23,533	\$19,765	\$17,413	\$63,634	\$101,702	\$226,047
CET Affordable Housing - Restricted (Com)	\$3,028	\$6,242	\$15,196	\$5,383	\$4,792	\$34,641
Total Revenue	<u>\$26,561</u>	<u>\$26,007</u>	<u>\$32,609</u>	<u>\$69,017</u>	<u>\$106,494</u>	<u>\$260,688</u>


Residential/Commercial Split (%)	88.6/11.4	76.0/24.0	53.4/46.6	92.2/7.8	95.5/4.5
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Total Residential CET Collections for (35/50/15 Split):	\$453,261 (86.8% of total)
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Total Commercial Collections for (50/50 Split):	\$68,921 (13.2% of total)
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Total Collections Less Administrative Fee:	\$522,182
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Memorandum

To: Planning Commission/Commission Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: November 9, 2023
Re: Establishing a Custom Creative Work Light-Industrial Use Category

On September 11, 2023, the Planning Commission and Commission Advisory Committee received a proposal from the Coastal Arts Guild to establish a new, small-scale, light-manufacturing use category for “Custom Creative Work.” An example code was provided from Seattle that placed an emphasis on uses that are made to order or require a significant amount of handwork without the use of a mechanized assembly line. The Planning Commission expressed an interest in seeing a draft code concept.

Attached is a draft set of amendments to NMC Chapter 14.03 that establishes “Custom Creative Work” as a subgroup of the manufacturing and production industrial use category. You’ll note that the version of the code that I am working with includes the as yet to be adopted legislative changes in response to mandates that kicked out of the 2023 legislative session (i.e. see footnote 7 below the table). That package of amendments is likely to be adopted before this one, and I wanted to make sure that we are using the most current table.

The example uses align with the concept provided by the Coastal Arts Guild and the Seattle code. If adopted, small scale uses of this nature, without a primary retail element, would be allowed. Manufacturing of this type that is sold from the premises is already allowed by the City as a retail sales and service use. The size limit of 2,000 square feet aligns with the conditional use threshold within the Nye Beach Design Review Overlay. That seemed like a reasonable way of setting a top end for the size of what should be craft scale operations. The emphasis on custom orders, significant handwork in the manufacturing process and lack of an assembly line, all of which are in the Seattle concept, have been worked into this draft.

The use category is being added as permitted in the City’s commercial and light-industrial zones. I have added it as conditional in medium and heavy industrial zoned areas. The City has a relatively small amount of medium and heavy industrial zoned land, and those properties allow fairly intensive industrial activities that could create compatibility issues. That is why a conditional use review is warranted in those areas.

If the Commission is comfortable with the draft, then a motion should be made at the regular session to initiate the legislative process. This is needed so that we can provide the required 35-day notice to the Department of Land Conservation and Development prior to the first hearing. Additional changes can be made to the concept after this work session, but before the hearing, if the Commission believes they are needed.

Attachments: Draft Amendments to NMC Chapter 14.03, Coastal Arts Guild Proposal, Email from the Nye Neighbors, and a Zoning Map

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 14.03 ZONING DISTRICTS

14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

D. Industrial Use Categories

2. Manufacturing and Production

a. Characteristics. Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Manufacturing and production activities within heavy commercial or light industrial areas are those that do not produce excessive noise, dust, vibration, or fumes.

b. Examples. Examples include uses from the ~~two~~ three subgroups listed below:

i. Custom Creative Work: Small-scale light manufacturing uses that are made to order or which involve considerable handwork as part of the production process. Such uses are produced without the need of a mechanized assembly line, and are wholly contained within

a structure such that they can be located within commercial zones and near residential areas without creating nuisance impacts. Uses include artwork, sculptures, candle-making, pottery, ceramic tile making, leatherwork, clock work, jewelry making, small-batch canning and brewing, glassblowing, soap-making, fine carpentry, and small-press printing.

iii. Light Manufacturing: Industrial uses that do not generate excessive noise, dust, vibration or fumes, such that they can be located near residential and commercial zones without creating nuisance impacts. Uses include processing of food and related products where the materials and processing activities are wholly contained within a structure, such as bakery products, canned and preserved fruits and vegetables, sugar and confectionary products, and beverages; catering establishments; breweries, distilleries, and wineries; manufacture of apparel or other fabricated products made from textiles, leather or similar materials; woodworking, including furniture and cabinet making; fabrication of metal products and fixtures; manufacture or assembly of machinery, equipment, or instruments, including industrial, commercial, and transportation equipment, household items, precision items, photographic, medical and optical goods, artwork, jewelry, and toys; manufacture of glass, glassware, and pressed or blown glass; pottery and related products; printing, publishing and lithography production; sign making; and movie production facilities.

iii. Heavy Manufacturing: Industrial uses that should not be located near residential areas due to noise, dust, vibration or fumes that may be generated by the activities. Uses include processing of food and related products where some portion of the materials are stored or processed outdoors, such as dairies, slaughter houses, or feed lots; leather tanning and finishing; weaving or production of textiles; lumber mills, pulp and paper mills, and other wood products manufacturing; production of

chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting, and rolling and finishing of metal products; production and refinement of fossil fuels; concrete batching; and asphalt mixing; and manufacturing of prefabricated structures, including mobile homes.

- c. Exceptions.
 - i. Manufacturing of goods to be sold primarily on-site and to the general public is classified as Retail Sales and Service.
 - ii. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

Staff: Creates a new category for "Custom Creative Work," where the light industrial activity are small-scale endeavors to create custom or handmade products that do involve the use of a mechanized assembly line (Seattle example). The activity must be contained within a structure. Example uses listed include those outlined in the proposal by the Coastal Arts Guild and Seattle code. It is relevant to note that this new category is intended to allow small scale manufacturing of goods that are not sold primarily on-site. The City's code already allows small-scale manufacturing where the goods are sold primarily on-site as a Retail Sales and Service" use (see above).

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

November 9, 2023 Revisions to NMC Chapter 14.03, Establishing a Custom Creative Work Light-Industrial Use Category

		C-1	C-2 ¹	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P ²	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	C	X	P	P	P	X
5.	Self-Service Storage ⁶	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service ⁶	X	X	P	P	P	P
8.	Manufacturing and Production						
	<u>a. Custom Creative Work⁸</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>C</u>
	ab. Light Manufacturing	X	X	C	P	P	P
	bc. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities ³	P	P	P	P	P	P
13.	Utility Corridors	C	C	C	C	C	C
14.	Community Service	P	C ^{7.}	P	P	C ^{7.}	X
15.	Family Child Care Home	P	P	P	X	X	X
16.	Child Care Center	P	P	P	P	P	X
17.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
18.	Hospitals	C	C	C	X	X	X
19.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
20.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
21.	Communication Facilities ⁴	P	X	P	P	P	P
22.	Residences on Floors Other than Street Grade	P	P	P	X	X	X
23.	Affordable Housing ⁵	P	P	P	P	X	X
24.	Transportation Facilities	P	P	P	P	P	P

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as set forth in Section 14.30.100.
2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.
3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.
4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.
5. Permitted as outlined in Chapter 14.15 or, in the case of hotels/motels, the units may be converted to affordable housing provided they are outside of the Tsunami Hazard Overlay Zone defined in NMC Chapter 14.50.
6. Self-service storage use; salvage or wrecking of heavy machinery, metal and building materials; towing and vehicle storage; and auto and truck salvage and wrecking are prohibited within the South Beach Transportation Overlay Zone, as defined in Section 14.43.020.
7. Subject to the requirements of ORS 197.782. An emergency shelter proposed within a C-2 or I-2 zone district shall be subject to a public hearing before the Newport City Council.
8. Limited to a maximum of 2,000 square feet of gross floor area.

Staff: A new category for custom creative work has been added with a stipulation that such uses be limited to 2,000 square feet of gross floor area. The new use category is permitted outright in the City's commercial and light industrial zones. Newport has a relatively small amount of medium and heavy industrial zoned properties where more intense industrial uses are allowed. This new category is listed as conditional in those zones, so that policymakers can evaluate proposals for compatibility with the broad range of industrial activities that can locate in these areas.

Summary of Proposal for *Custom Creative Work*

The Coastal Arts Guild, a non-profit organization whose mission is to support and further the arts along the Central Oregon Coast, proposes the addition of a designation "Custom Creative Work" as a permitted use in all Commercial zones in the City of Newport, along with the continued permitting of such uses in Newport's Industrial zones.

Goals:

- encourage economic development by allowing new, creative small-business enterprises
- foster growth of dynamic and attractive commercial areas
- strengthen Newport's diverse economy
- support and promote local arts and culture
- expand opportunities for youth
- support the goals of Newport's *Vision 2040*

Examples of Custom Creative Work:

- leatherwork for custom saddles and boots
- small-batch canning and brewing
- studio arts such as painting and sculpture
- candle- and soap-making
- custom, fine carpentry
- small press fine printing

The new designation would require compliance with all other current regulations and restrictions for the zones in which it is permitted.

September 11, 2023

To the City of Newport Planning Commission:

The Board of the Coastal Arts Guild requests that a new designation, "Custom Creative Work," be added as a permitted use in all Commercial zones. Some examples of this new designation are painting, leatherwork, sculpture, making ceramics or tiles, soap-making, candle-making, fine printing, and small-batch canning and brewing.

Currently such uses are designated "Light Manufacturing" (*Exhibit A*) and so are prohibited in zones

- C-1 (Hwy 101, including the downtown revitalization area) and
- C-2 (Nye Beach, South Beach from Hwy 101 to the Aquarium);

and, a conditional use permit (CUP) is required for these uses in zone:

- C-3 (Hwy 101, Hwy 20 and Ferry Slip Road).

Proposed Uses and Requirements

As in Seattle's zoning code (*Exhibit B*), the use would be limited to "food items and craft work...produced without the use of a mechanized assembly line." Square footage limits may also be applied to specified industries. (See *Exhibit A* for possible approach to code amendments.)

The permitted uses would be limited to those that *would not* introduce outdoor noise, vibration, dust, odor, or air pollution beyond that of other commercial uses. Newport's parking requirements would not need to change (determined by the floor space of each use). Freight pick-up, if allowed, would be limited by hours and vehicle size. Standards for solid waste management would be the same as currently required in C-zones.

We suggest that "Custom Creative Work" businesses in Commercial Zones should be required to include a retail, museum, and/or educational public interface in order to preserve the commercial character of the zones.

Note that we also recommend that the new "Custom Creative Work" designation should be permitted outright in all Industrial (I-1, I-2, and I-3) zones *without* the above storefront/public interface requirement, so that these uses continue to be permitted in Industrial areas as they are currently allowed with no change to existing enterprises.

Positive Impacts to City of Newport Administration

The Newport Community Development Department reports that this zoning change would save staff and leadership time. As mentioned above, Light Manufacturing in Zone C-3 requires a CUP. The CUP process takes staff time (which is usually not covered by the application fee) and, importantly, unpaid City leadership time and attention. In these times when it is hard to fill positions, including leadership positions, reducing CUPs would help the City operate more efficiently.

Positive Impacts to Newport Economy

Zoning articulates a vision for a community. By permitting custom craft and food processing uses outright in its commercial areas, Newport will send a signal to potential investors and artisans alike that we value and encourage a diverse and dynamic economy that supports the arts and entrepreneurs.

The Coastal Arts Guild Board is aware of three separate instances within the past year in which different potential investors---entrepreneurs who sought to establish combination retail/studio spaces---looking at three different commercial properties in Newport, were deterred from investment by Newport's existing zoning. The restriction that classifies custom craft and artwork as light manufacturing prohibited in C1 and C2 and requiring an uncertain conditional use permit in C3, prevented these people from investing in Newport and starting new businesses here.

Allowing creative production uses in the Commercial zones would increase the diversity of consumer experiences in these areas and would support Newport's creative economy and fledgling small businesses.

Newport stands out among coastal areas in its public support for the arts, and also for its diverse economy. Newport needs to preserve its long legacy as a place that supports, creates, and promotes the arts. Other small cities across the country are working to cultivate the kind of creative community that Newport has been and can continue to be.

Note that the goal in supporting creative enterprises is not only to attract tourists. People want to live and work in Newport because it offers cultural richness and diversity. Many people move to the coast to live out their dreams, and those dreams often involve pursuing creative endeavor.

Walkable commercial zones with galleries and shops featuring custom, locally produced products will help Newport stand out as distinctly attractive to visitors and investors.

Increasing the number and diversity of custom craft and art production enterprises within Newport could also provide opportunities for youth to participate in cultural activities through increased and expanded community arts events, as well as through direct employment and apprenticeship opportunities.

Alignment with Newport's Vision 2040

This proposal would help further many of Newport's Vision 2040 visions and goals:

Goal A5. City Center Revitalization

Develop a City Center improvement strategy that expands options for living, shopping, working, and dining in the area by promoting walkability, mixed-use development, and refurbishment of historic buildings.

Goal A6. Mixed-Use Development

Promote mixed-use neighborhoods in appropriate areas of the city, incorporating a blend of commercial uses, employment, and residential development that create a distinct sense of place.

Vision Statement C: Our Vision for Creating New Businesses and Jobs

In 2040, the Greater Newport Area collaborates to create economic opportunities and living wage jobs that help keep Newport dynamic, diverse, and affordable. Our economy is balanced and sustainable, producing living-wage jobs in the trades and professions, while supporting new start-up companies and small businesses based on local talent, entrepreneurship, ideas, and resources.

Goal C7. Arts and Cultural Destination

Promote the Greater Newport Area as a major arts and cultural destination.

Goal C9. Small Business Development

Expand training and education for small business development and entrepreneurial skills, including resources for artists, craftspeople, trades, and technology start-ups.

From Vision Statement D: Our Vision for Learning, Exploring, and Creating New Horizons

"The arts and opportunities for creative expression and learning are high quality, diverse, and available and accessible to everyone."

Goal D3. Art in Public Spaces

Integrate the arts as a key element of the city's identity, including expanding the presence of public art throughout the community.

Goal D5. Summer Arts Offerings

Expand outdoor summer arts events and offerings, such as music and theater.

Goal D6. Schools and Local Talent

Promote increased partnerships between schools and local talent, including scientists, artists, craftspeople, and tradespeople who share their knowledge with area classes and students.

Goal D12. Access to the Arts

Increase the availability of, and access to, lower cost arts venues and performances while supporting new, innovative opportunities, including workshops, film, and student work.

Exhibit A - Current Newport Zoning Code Definition of Light Manufacturing, prohibited in C-1 and C2 and requiring a CUP in C-3

Newport Municipal Code 14.03.060 D2(b)i:

Light Manufacturing: Industrial uses that do not generate excessive noise, dust, vibration or fumes, such that they can be located near residential and commercial zones without creating nuisance impacts. Uses include processing of food and related products where the materials and processing activities are wholly contained within a structure, such as bakery products, canned and preserved fruits and vegetables, sugar and confectionary products, and beverages; catering establishments; breweries, distilleries, and wineries; manufacture of apparel or other fabricated products made from textiles, leather or similar materials; woodworking, including furniture and cabinet making; fabrication of metal products and fixtures; manufacture or assembly of machinery, equipment, or instruments, including industrial, commercial, and transportation equipment, household items, precision items, photographic, medical and optical goods, artwork, jewelry, and toys; manufacture of glass, glassware, and pressed or blown glass; pottery and related products; printing, publishing and lithography production; sign making; and movie production facilities.

Proposed Amendments to Zoning Code:

1. Create new Custom Creative Work use designation.
2. Amend "Light Manufacturing" as excluding Custom Creative Work for the purposes of the Zoning Code
3. Allow Custom Creative Work in Commercial zones, requiring store-front and compliance with other C-zone regulations.
4. Allow Custom Creative Work in Industrial zones with no additional restrictions (effectively no change to current use in I-zones).

(See *Exhibit B* for example of Seattle Municipal Code)

Exhibit B – Examples from other Municipalities

City of Seattle Food Processing and Craft Work use permitted in all commercial zones

SMC 23.84A.012 [3] - "F" / FOOD PROCESSING AND CRAFT WORK"

means a commercial use in which food items and craft work are produced without the use of a mechanized assembly line and includes but is not limited to the following:

a. "Custom and craft work" means a food processing and craft work use in which nonfood, finished, personal or household items, which are either made to order or which involve considerable handwork, are produced.

Examples include but are not limited to pottery and candlemaking, production of orthopedic devices, motion picture studios, printing, creation of sculpture and other art work, and glassblowing. The use of products or processes defined as high-impact uses shall not be considered custom and craft work.

b. "Food processing" means a food processing and craft work use in which products for human consumption, such as candy, baked goods, seafood, sausage, tofu, pasta, beverages, tinctures, consumable oils, products to be smoked, etc., are produced for sale and consumption off the premises.

Food processing includes catering services. Processing of products for human consumption using mechanized assembly line production of canned or bottled goods is not included in this definition, but is considered to be light manufacturing.

SMC 23.84A.025 [2] - "M" / "Manufacturing"

A use in which articles are produced by hand or by machinery, from raw or prepared materials, by giving to those materials new forms, qualities, properties, or combinations, in a process characterized by the repetitive production of items made to the same or similar specifications. Items produced are generally sold directly to other businesses, or are sold at wholesale. The retail sale of items to the general public is incidental to the production of goods. For the purpose of this definition, uses listed as food processing and craft work or high-impact uses are not considered manufacturing uses.

(Seattle continued)

SMC 23.84A.025 [2] = "M" / "Manufacturing, light"

a manufacturing use, typically having little or no potential of creating noise, smoke, dust, vibration or other environmental impacts or pollution, and including but not limited to the following:

- * Production, assembly, finishing, and/or packaging of articles from parts made at another location, such as assembly of clocks, electrical appliances, or medical equipment.

- * Production of finished household and office goods, such as jewelry, clothing or cloth, toys, furniture, or tents, from materials that are already refined, or from raw materials that do not need refining, such as paper, fabric, leather, premilled wood; or wool, clay, cork, semiprecious or precious metals or stones, fiber, or other similar materials;

- * Canning or bottling of food or beverages for human consumption using a mechanized assembly line or food processing for animal consumption;

- * Printing plants with more than five thousand (5,000) square feet of gross floor area.

Example: Toledo, Oregon:

17.16.020 - Uses permitted outright.

In the C zone, the following uses and their accessory uses are permitted outright.

H. Custom manufacturing of goods for retail and/or wholesale sale on the premises such as small-scale crafts, electronic equipment, bakery, furniture, art, sculpture, pottery, or other similar types of goods.

Sherri Marineau

From: Jan Kaplan
Sent: Saturday, September 09, 2023 2:41 PM
To: Public comment
Cc: Carol Shenk; Tom Briggs; TOM ETTTEL; Veronica Lundell; Martha Krupp; Robert Emond; Jan Kaplan; Jason Holland
Subject: Support for Coastal Arts Guild proposal

[WARNING] This message comes from an external organization. Be careful of embedded links.

To the Newport Planning Commission
From Nye Neighborhood Association

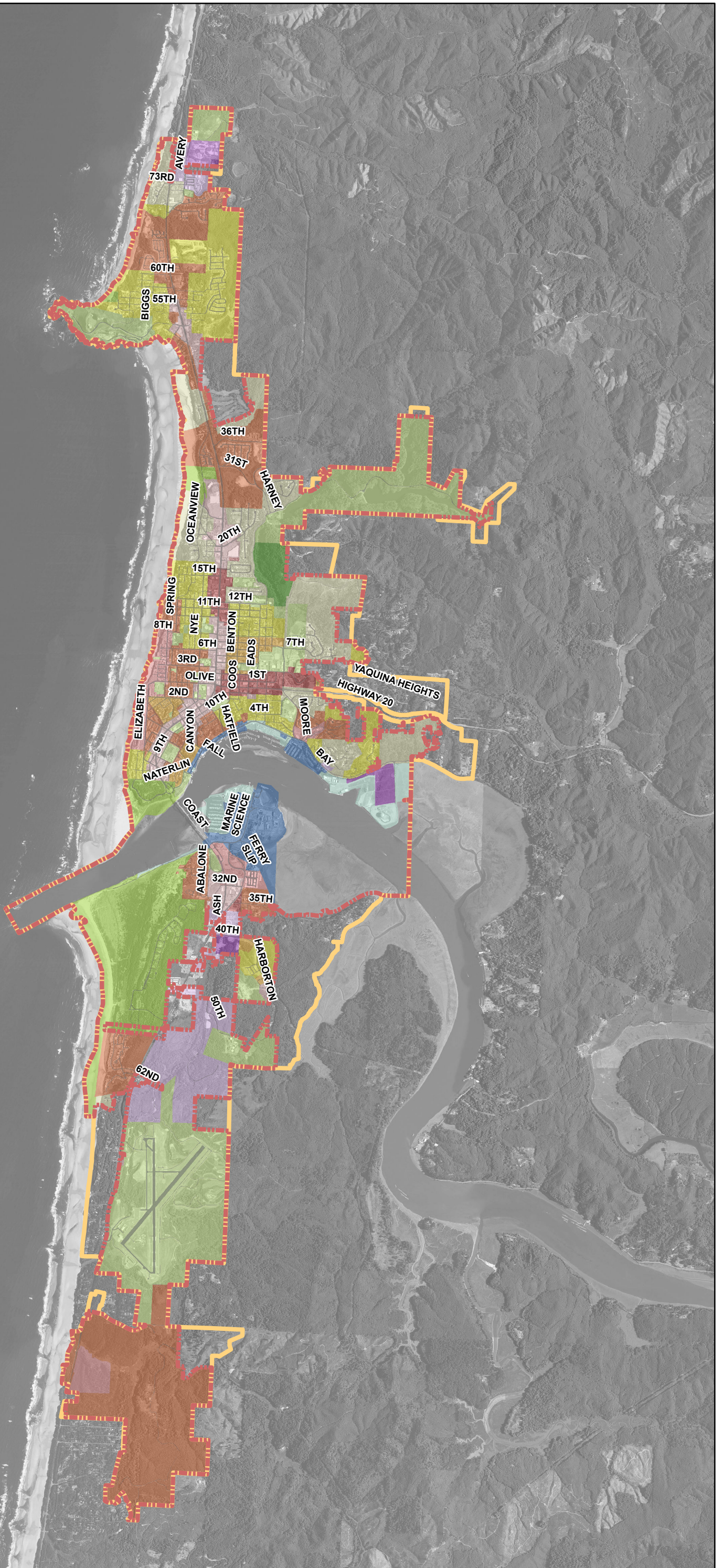
The Nye Neighborhood Association is in full support of the Coastal Arts Guild (CAG) proposal to create a "custom creative work" category that would allow small scale craft industries in the City's commercial areas. If incorporated into our zoning this designation for outright use would encourage artistic, craft and creative businesses.

Our neighborhood and the City would benefit from potential new businesses and from increasing the cultural footprint that improves our quality of life as residents. The custom creative work designation will be a significant tool in advancing the goal of revitalizing downtown. Our Association also fully supports pursuing a designation as a Cultural District. The CAG proposal is totally in line with making Newport a cultural destination for visitors and residents.

Thank you,
Jan Kaplan, President
Nye Neighborhood Association

Legend

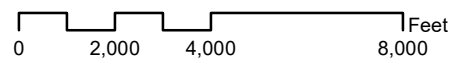
-  City Limits
-  UGB
- Zone District**
-  C-1 Retail and Service
-  C-2 Tourist
-  C-3 Heavy
-  I-1 Light
-  I-2 Medium
-  I-3 Heavy
-  P-1 Public Structures
-  P-2 Public Parks
-  P-3 Public Open Space
-  R-1 Low Density Single-Family
-  R-2 Medium Density Single-Family
-  R-3 Medium Density Multi-Family
-  R-4 High Density Multi-Family
-  W-1 Water Dependent
-  W-2 Water Related



City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644

Newport Zoning Map

Image Taken July 2009
 4-inch, 4-band Digital Orthophotos



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

Sherri Marineau

From: Derrick Tokos
Sent: Monday, November 13, 2023 11:22 AM
To: Sherri Marineau
Subject: FW: New craft industry code

Please distribute Carol's email and my response to the Commission members.

Derrick

-----Original Message-----

From: Derrick Tokos <>
Sent: Monday, November 13, 2023 11:21 AM
To: 'Carol Shenk' [REDACTED]
Cc: 'Janet Webster' [REDACTED]
Subject: RE: New craft industry code

Hi Carol, thanks for taking a look at the draft. The 2,000 sq. ft. limit would apply to the use, not the building. The uses listed are examples and are not intended to be all inclusive (see my response to Janet). That said, I don't see an issue adding craft food and drink production to the list.

The code currently allows taffy shops if the product is sold primarily on-site, like what we have on the Bayfront. That type of manufacturing activity is classified as a "Retail Sales and Service" use. What this code change will do is allow small-scale manufacturing (i.e. custom creative work) in the City's commercial zones in circumstances where the goods are primarily being sold elsewhere.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

-----Original Message-----

From: Carol Shenk <carol@dadamancer.org>
Sent: Monday, November 13, 2023 9:03 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: 'Janet Webster' [REDACTED]
Subject: Re: New craft industry code

[WARNING] This message comes from an external organization. Be careful of embedded links.

Derrick,
Thank you for sending this and for your work on this addition to the code.

I agree with Janet, it is best to include "but not limited to" so you have flexibility into the future.

One question: to me it is unclear if the 2,000 sf limit applies to the entire building or the use within a structure. If it is the use, that seems reasonable. It would be too restrictive if it is the building floor area.

I do feel that craft food and drink production should be included in the list of possible uses. These are part of the creative "makers" economy and would not have any adverse impact on neighborhoods nor on other local businesses. If craft food and drink production are not included in the new category, such uses would still be outright prohibited (with no conditional use) in some areas. Currently there are taffy shops that would fit into this category, and they are an example of how such uses can build a local identity and enhance the tourism experience.

Thank you again for your time.

Sincerely,
Carol

On 2023-11-09 17:11, Derrick Tokos wrote:

> Hi Janet and Carol... attached is a draft of the proposed amendments.
> The Planning Commission will consider them at a work session Monday at
> 6:00pm and you are welcome to attend. I'll be out of the office
> tomorrow, but back on Monday if you have questions.

>
> Derrick I. Tokos, AICP
> Community Development Director
> City of Newport
> 169 SW Coast Highway
> Newport, OR 97365
> ph: 541.574.0626 fax: 541.574.0644
> d.tokos@newportoregon.gov

>
>
>
> -----Original Message-----
> From: Derrick Tokos <>
> Sent: Monday, October 30, 2023 5:09 PM
> To: 'Janet Webster' [REDACTED]
> Cc: Carol Shenk [REDACTED]
> Subject: RE: New craft industry code

>
> Hi Janet... I don't have anything yet, but will make sure to send you
> and Carol a draft in advance.

>
> Derrick I. Tokos, AICP
> Community Development Director
> City of Newport
> 169 SW Coast Highway
> Newport, OR 97365
> ph: 541.574.0626 fax: 541.574.0644
> d.tokos@newportoregon.gov

>
>

>
> -----Original Message-----
> From: Janet Webster [REDACTED]
> Sent: Saturday, October 28, 2023 5:46 PM
> To: Derrick Tokos <D.Tokos@NewportOregon.gov>
> Cc: Carol Shenk [REDACTED]
> Subject: New craft industry code
>
> [WARNING] This message comes from an external organization. Be careful
> of embedded links.
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>
>
> Hi Derrick,
>
> I see that there is a placeholder in the November 13th PC work session
> on the craft industry code. Do you have something drafted or are you
> still working on it? Carol and I would like to review a draft before
> the work session if that's appropriate.
>
> Thanks,
> -Janet
>
> Janet Webster
> [REDACTED]

Sherri Marineau

From: Derrick Tokos
Sent: Monday, November 13, 2023 11:22 AM
To: Sherri Marineau
Subject: FW: New craft industry code

Please distribute Janet's email and my response to the Commission members.

Derrick

-----Original Message-----

From: Derrick Tokos <>
Sent: Monday, November 13, 2023 11:08 AM
To: 'Janet Webster' [REDACTED]
Cc: Carol Shenk [REDACTED]
Subject: RE: New craft industry code

Hi Janet,

Thanks for taking a look at the draft. There is language earlier in Chapter 14.03 that explains that the uses listed are examples and that the Community Development Director is responsible for identifying which "use category" a particular development concept falls under. It is NMC 14.03.060(A) and (B) and here is the specific language.

A. Application of Use Categories. Uses are to be assigned to the category whose "Characteristics" most closely describe the nature of the primary use. Developments may have more than one primary use. "Use Examples" are provided for each use category. The names of uses on the list are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Liquidation" but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description on the Retail Sales and Service category.

B. Interpretation. When a use's category is not clearly identifiable, the Community Development Director shall determine the applicable use category under a Type I decision-making process as provided by Section 14.52. The following factors are to be considered to determine what use category the use is in, and whether or not the activities constitute a primary use.

I believe the above language provides sufficient clarity on the point, and adding "uses include but are not limited to" to each section of the code that lists example uses, and there are quite a few of them, would not be value additive.

Footnote 1 in the table stipulates that conditional use review is required for any new or expanded outright permitted use that exceeds 2,000 sq. ft. in size. It applies to tourist-commercial zoned areas, a large portion of which are in the Nye Beach Design Review District. That provision was added to the code some time ago, to ensure there is greater scrutiny over larger commercial or mixed use buildings.

Footnote 8 would limit custom creative work to no more than 2,000 sq. ft. of gross floor area. There would be no conditional use option for a custom creative work concept larger than that in the C-2 zone. For small scale craft work, a 2,000 sq. ft. limit sounds about right. The City's code currently allows manufacturing of goods (including custom creative work) to be sold primarily on-site as a "Retail Sales and Service" use, so what we are talking about here is custom creative work where the goods are primarily being sold elsewhere. A square footage limitation of some sort would seem appropriate, as a light industrial area is more appropriate for larger manufacturing operations given their shipping and

storage needs. That number could be higher than 2,000 sq. ft though if that figure is too much of a constraint. The numbers that I have typically seen top out small-scale manufacturing at 5,000 sq. ft. (see links below), with most in the 1,000 to 2,000 sq., ft. range. I don't know that it would be wise to go above 5,000 sq. ft and if a limit is set above 2,000 sq. ft. then in the C-2 there would be two paths for approval, with uses at or under 2,000 sq. ft. being allowed outright and those over 2,000 sq. ft. requiring conditional use review per Footnote 1.

<https://www.strongtowns.org/journal/2021/7/16/small-scale-manufacturing-a-key-to-revitalizing-your-downtown>
<https://smartgrowthamerica.org/economic-opportunity-small-scale-manufacturing/>

Derrick I. Tokos, AICP
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169 SW Coast Highway
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d.tokos@newportoregon.gov

-----Original Message-----

From: Janet Webster [REDACTED]
Sent: Sunday, November 12, 2023 11:07 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Carol Shenk [REDACTED]
Subject: Re: New craft industry code

Hi Derrick,

I won't be at the meeting as I'll be in transit from Portland.
I think it reads quite well.

D. 2.b.i. Do you want the uses limited to what are listed or should there be some wiggle language? "Uses include but are not limited to..."

Footnote 1 in the Table: I'm not clear on the 2,000 square foot limitation. In C2 zones, over 2000 needs a conditional use? Footnote 8 explicitly states the limitation for custom creative work.

I'm sure that Carol will have more input. Thanks for following through.

-Janet

> On Nov 9, 2023, at 5:11 PM, Derrick Tokos <D.Tokos@NewportOregon.gov> wrote:

>

> Hi Janet and Carol... attached is a draft of the proposed amendments. The Planning Commission will consider them at a work session Monday at 6:00pm and you are welcome to attend. I'll be out of the office tomorrow, but back on Monday if you have questions.

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> Derrick I. Tokos, AICP
> Community Development Director
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> d.tokos@newportoregon.gov

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> Sent: Monday, October 30, 2023 5:09 PM
> To: 'Janet Webster' [REDACTED]
> Cc: Carol Shenk [REDACTED]
> Subject: RE: New craft industry code
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> Sent: Saturday, October 28, 2023 5:46 PM
> To: Derrick Tokos <D.Tokos@NewportOregon.gov>
> Cc: Carol Shenk [REDACTED]
> Subject: New craft industry code

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>
> Thanks,
> -Janet
>
> Janet Webster
> jlgwebster113@gmail.com

> <NMC Chapter 14.03 Amendments - Establishing a Custom Creative Work Industrial Designation.pdf>

Janet Webster
[REDACTED]

Memorandum

To: Planning Commission/Commission Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: November 9, 2023
Re: HB 2984 - Commercial to Residential Conversions

I would like to talk to you briefly about Section 6(c) of this bill which prohibits City's from requiring the payment of a system development charge for commercial to residential conversions unless it has adopted a specific policy requiring such payment on or before December 31, 2023. The way our credit language is structured, any residential conversion would get credit for the prior use meaning that system development charges would be limited to the additional impact of the project. In many cases there is no additional impact and; therefore, no SDC fee. My plan is to discuss this with the City Council and see if they would be amenable to adopting a resolution before the end of the year that states that the City applies its SDCs to commercial to residential conversions. I would be happy to pass along any comments the Planning Commission has on the topic.

Attachments

HB 2984 Enrolled
NMC Chapter 12.15, System Development Charges

Enrolled House Bill 2984

Sponsored by Representative MARSH; Representatives ANDERSEN, DEXTER, FAHEY, HELM, MCLAIN, Senators ANDERSON, DEMBROW, GOLDEN, JAMA, PATTERSON (Presession filed.)

CHAPTER

AN ACT

Relating to housing; amending ORS 197.308.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.308, as amended by section 4, chapter 47, Oregon Laws 2022, is amended to read:

197.308. (1) As used in this section[,]:

(a) “Affordable housing” means residential property:

[(a)] (A) In which:

[(A)] (i) Each unit on the property 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)] (ii) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

[(b)] (B) Whose affordability [*is enforceable*], including **affordability under a covenant** as described in ORS 456.270 to 456.295, **is enforceable** for a duration of no less than 30 years.

(b) “**Area median income**” means **the median income for the metropolitan statistical area in which housing is located as determined by the Housing and Community Services Department and adjusted for household size based on information from the United States Department of Housing and Urban Development.**

(2) A local government shall allow affordable housing[, *and may not require a zone change or conditional use permit for affordable housing.*] if the proposed affordable housing is on property that is:

(a) Owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

(3) A local government shall allow the conversion of a building or a portion of a building from a commercial use to a residential use.

[(3)] (4) [Subsection (2)] **Subsections (2) and (3)** of this section:

[(a) Does not apply to the development of housing not within an urban growth boundary.]

(a) Prohibit the local government from requiring a zone change or conditional use permit before allowing the use.

(b) *[Does]* **Do** not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

[(c) Applies on property zoned to allow for industrial uses only if the property is:]

[(A) Publicly owned;]

[(B) Adjacent to lands zoned for residential uses or schools; and]

[(C) Not specifically designated for heavy industrial uses.]

[(d)] (c) [Does] **Do** not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

(5) The development of housing under subsection (2) of this section may occur only:

(a) Within an urban growth boundary; and

(b) On lands zoned to allow for industrial uses only if the property is:

(A) Publicly owned;

(B) Adjacent to lands zoned for residential uses or schools; and

(C) Not specifically designated for heavy industrial uses.

(6) The development of housing under subsection (3) of this section:

(a) Applies only within an urban growth boundary of a city with a population of 10,000 or greater;

(b) May not occur on lands zoned to allow industrial uses;

(c) May require the payment of a system development charge as defined in ORS 223.299 only if:

(A) The charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or

(B) The charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed; and

(d) May not be subject to enforcement of any land use regulation that establishes a minimum number of parking spaces that is greater than the lesser of:

(A) The amount that may be required for the existing commercial use; or

(B) The amount that may be required in lands zoned for residential uses that would allow the converted development.

[(4)] (7) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or

(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

[(5)(a)] **(8)(a)** Subsection [(4)] **(7)** of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection [(4)] **(7)** of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

SECTION 1a. If House Bill 3442 becomes law, section 1 of this 2023 Act (amending ORS 197.308) is repealed and ORS 197.308, as amended by section 4, chapter 47, Oregon Laws 2022, and section 1, chapter __, Oregon Laws 2023 (Enrolled House Bill 3442), is amended to read:

197.308. (1) As used in this section[.];

(a) “Affordable housing” means residential property:

[(a)] **(A)** In which:

[(A)] **(i)** Each unit on the property 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)] **(ii)** The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

[(b)] **(B)** Whose affordability [*is enforceable*], including **affordability under a covenant** as described in ORS 456.270 to 456.295, **is enforceable** for a duration of no less than 30 years.

(b) “Area median income” means the median income for the metropolitan statistical area in which housing is located as determined by the Housing and Community Services Department and adjusted for household size based on information from the United States Department of Housing and Urban Development.

(2) A local government shall allow affordable housing[, *and may not require a zone change or conditional use permit for affordable housing.*] if the proposed affordable housing is on property that is:

(a) Owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

(3) A local government shall allow the conversion of a building or a portion of a building from a commercial use to a residential use.

[(3)] **(4)** [Subsection (2)] **Subsections (2) and (3)** of this section:

[(a) *Does not apply to the development of housing not within an urban growth boundary.*]

(a) Prohibit the local government from requiring a zone change or conditional use permit before allowing the use.

(b) [Does] **Do** not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

[(c) *Applies on property zoned to allow for industrial uses only if the property is:*]

[(A) *Publicly owned;*]

[(B) *Adjacent to lands zoned for residential uses or schools; and*]

[(C) *Not specifically designated for heavy industrial uses.*]

[(d)] **(c)** Except as provided in paragraph [(e)] **(d)** of this subsection, [*does*] **do** not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

[(e)] (d) [Does] Do apply to property described in paragraph [(d)(C)] (c)(C) and (D)(i) of this subsection if more than 60 percent of the lands within the urban growth boundary that the property is within are located within a tsunami inundation zone or if more than 30 percent of the lands within the urban growth boundary that the property is within are located within a 100-year floodplain.

(5) The development of housing under subsection (2) of this section may occur only:

(a) Within an urban growth boundary; and

(b) On lands zoned to allow for industrial uses only if the property is:

(A) Publicly owned;

(B) Adjacent to lands zoned for residential uses or schools; and

(C) Not specifically designated for heavy industrial uses.

(6) The development of housing under subsection (3) of this section:

(a) Applies only within an urban growth boundary of a city with a population of 10,000 or greater;

(b) May not occur on lands zoned to allow industrial uses;

(c) May require the payment of a system development charge as defined in ORS 223.299 only if:

(A) The charge is calculated pursuant to a specific adopted policy for commercial to residential conversions adopted on or before December 31, 2023; or

(B) The charge is for water or wastewater and includes an offset for at least 100 percent of the water or wastewater system development charges paid when the building was originally constructed; and

(d) May not be subject to enforcement of any land use regulation that establishes a minimum number of parking spaces that is greater than the lesser of:

(A) The amount that may be required for the existing commercial use; or

(B) The amount that may be required in lands zoned for residential uses that would allow the converted development.

[(4)] (7) The development of housing allowed under subsection [(3)(e)] (4)(d) of this section may only occur:

(a) Within an urban growth boundary located no more than 10 miles from the Pacific Ocean;

(b) In areas that require compliance with minimum federal regulations under the National Flood Insurance Program or with local floodplain development regulations adopted by the applicable local government, provided that the local regulations are equal to or more stringent than the minimum federal regulations;

(c) In locations that do not include floodways or other areas with higher risks of greater water velocity and debris flow;

(d) In communities with emergency response, evacuation and post-disaster plans that have been updated for the housing development; and

(e) In areas that are not public parks.

[(5)] (8) A local government may prohibit affordable housing or require a zone change or conditional use permit to develop affordable housing in areas described in subsection [(3)(e)] (4)(d) of this section.

[(6)] (9) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or

(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

[(7)(a)] (10)(a) Subsection [(6)] (9) of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection [(6)] (9) of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

Passed by House March 28, 2023

Repassed by House June 23, 2023

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Secretary of State

CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

12.15.005 Purpose

This chapter is intended to authorize system development charges (“SDCs”) to impose a portion of the cost of capital improvements for water, wastewater, storm drainage, transportation, and parks on developments and redevelopments that create the need for or increase the demands on capital improvements, consistent with state law. The provisions of this chapter are to be interpreted consistent with state law.

12.15.010 Scope and Interpretation

The SDCs authorized by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee. SDCs are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI Section 11B, of the Oregon Constitution or the legislation implementing that section and are not subject to the limitations imposed by that section.

12.15.015 Definitions

The following definitions apply in this chapter.

- A. **Applicant** means the person who applies for a residential, commercial, industrial, or other connection to the city’s water supply system or sanitary sewer system and/or who develops property within the city or within the city’s Urban Growth Boundary.
- B. **Building** means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.
- C. **Capital Improvements** means public facilities or assets used for:
 - 1. Wastewater collection, transmission, treatment and disposal, or any combination.

2. Water supply, treatment, distribution, storage, metering, fire protection, or any combination.
 3. Drainage and flood control.
 4. Transportation facilities including vehicle and pedestrian.
 5. Parks and recreation.
- D. **Development** means any construction of improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and water and sewer fixtures. Development includes redevelopment of property requiring a building permit. Development includes improved open areas such as plazas and walkways.
- E. **Equivalent Dwelling Unit** or **EDU** means the base element of the formula by which systems development charge rates are determined for various buildings or developments.
- F. **Owner** means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- G. **Permittee** means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, or right-of-way access permit is issued.
- H. **Qualified Public Improvement** means a capital improvement that is:
1. Required as a condition of development approval;
 2. Included in an adopted SDC project list and:
 - a. Not located on or contiguous to a parcel of land this is the subject of the development approval; or
 - b. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular

development project to which the improvement fee is related.

For the purposes of this definition, “contiguous” includes improvements within a right of way that abuts the parcel.

12.15.020 System Development Charged Imposed; Method for Establishment

- A. The amount of system development charges may be set and revised by resolution of the City Council. Any resolutions setting or amending the amount of any SDC shall state the amount of the charge and the methodology used to set the amount of the charge.
- B. Unless otherwise exempted, SDCs for water, wastewater, storm water, transportation and parks are imposed on all development within the city, on all development outside the city that connects to the water and/or sewer facilities of the city, and on all other development which increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements. This shall include new construction and the alteration, expansion or replacement of a building or development if such alteration, expansion or replacement results in a change in any of the components of the formula for determining the amount of SDCs to be paid. For redevelopment, the amount of the SDC to be paid shall be the difference between the rate for the proposed redevelopment and the rate that would be applicable to the existing development.

12.15.025 Methodology

- A. The methodology used to establish or modify a reimbursement fee shall be based on the cost of then-existing facilities including without limitation, design, financing and construction costs; prior contributions by then-existing users; gifts or grants; the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements; and other relevant factors identified by the City Council. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish or modify the improvement fee shall consider the cost of projected

capital improvements needed to increase the capacity of the systems to which the fee is related and other relevant factors identified by the Council. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

- C. The methodology used to establish or modify improvement fees or reimbursement fees, or both, shall be adopted and may be amended by Council resolution.

12.15.030 Authorized Expenditures

- A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.
- B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.
- C. SDC proceeds may be expended only on projects identified in the SDC capital improvement project list or on the direct costs of complying with the provisions of this chapter, including the costs of developing SDC methodologies, system planning, providing an annual accounting of SDC expenditures and other costs directly related to or required for the administration and operation of this SDC program.

12.15.035 Expenditure Restrictions

- A. SDCs shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. SDCs shall not be expended for costs of the operation or routine maintenance of capital improvements.

12.15.040 SDC Projects Plan

- A. The Council shall adopt and may amend by resolution an SDC Projects Plan for each type of SDC that lists:
 - 1. The capital improvements that the city intends to fund in whole or in part with the improvement fee revenues; and
 - 2. The estimated cost of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues.
- B. In adopting the SDC Projects Plan, the city may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- C. If the amount of SDC charges will be increased by a proposed modification to the SDC Projects Plan, the city shall:
 - 1. Provide at least 30 days' notice prior to adopting the modification to those who have requested notice; and
 - 2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

12.15.045 Adoption or Amendment of Methodology

- A. The Council shall hold a public hearing prior to adopting or amending the methodology on which any SDC is based.
- B. The Council shall provide written notice to persons who have requested notice of any adoption or modification of SDC methodology at least 90 days before the hearing. If no one has requested notice, the city shall publish notice in a newspaper of general circulation in the city at least 90 days before the hearing.
- C. The revised methodology shall be available to the public at least 60 days before the first public hearing of the adoption or amendment of the methodology. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city. If the city fails to

provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The city may consider comments submitted at improperly noticed hearings.

- D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change is based on a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with state law.
- E. A change in the amount of an improvement fee is not a modification of the SDC methodology if the change is the result of a change in the SDC Projects List adopted in accord with this chapter.

12.15.050 Collection of Charge

- A. The SDC is payable on:
 - 1. Issuance of a building permit or any construction activity for which a building permit is required but not obtained.
 - 2. Issuance of a development permit or approval for development not requiring the issuance of a building permit. A permit or approval to connect to the water and/or sewer system;
 - 3. Issuance of a permit to connect to the water system or actual connection to the water system if a permit is not obtained.
 - 4. Issuance of a permit to connect to the sewer system or actual connection to the sewer system if a permit is not obtained.
- B. SDCs are payable only for those types of improvements affected by the development, permit or connection. For example, a permit to connect an existing structure to the sewer system does not necessarily trigger an obligation to pay Parks, Transportation, Water or Stormwater SDCs.
- C. The amount of SDC payable shall be established by resolution relying on an approved methodology and SDC

project plan. The SDC project plan, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, transportation and park) can be included in a single resolution.

- D. No permit listed in Subsection A. may be issued unless applicable SDCs have been paid or an agreement entered to pay over time as allowed by this chapter.

12.15.055 Installment Payments

- A. The owner of the parcel of land subject to a systems development charge 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.

12.15.060 Exemptions

- A. The following actions are exempt from payment of SDCs:
 - 1. Additions to multi-family and other dwelling units that are assessed SDCs on an Equivalent Dwelling Unit basis, provided the addition does not result in a new dwelling unit.
 - 2. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or

structure's use of a public improvement system is exempt from payment for the SDC payment applicable to that type of improvement. Some redevelopment may be subject to some types of SDCs and not to others.

3. Temporary and seasonal uses, including special events, mobile food units (other than pods), and patio or deck seating associated with eating or drinking establishments.

(Chapter 12.15.060(A) was amended by Ordinance No. 2187, adopted on September 7, 2021; effective October 7, 2021.)

- B. If all SDCs were paid at the time of the first action that triggered the obligation to pay, no additional payment is required at the time of other actions that would trigger the obligation to pay, even if the amount payable has increased, unless there has been a change in the design or use that would affect the amount payable.

12.15.065 Credits

- A. When a development occurs that is subject to SDCs, the SDC for the existing use(s), if applicable, shall be calculated and if it is less than the SDC for the use that will result from the development, the difference between the SDC for the existing use and the SDC for the proposed use shall be the SDC that is assessed. If the change in the use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be required; however, no refund or credit shall be given.
 1. For the purpose of this section, "existing use" is any use or structure on a property within the last 10 years. If more than one use or structure was on a property within this timeframe than the existing use shall be that which placed the greatest demand on the capital system during this period of time.
 2. Credits shall not be transferable from one development to another, except as provided in NMC [12.15.065\(D\)\(6\)](#).*
 3. Credits shall not be transferable from one type of capital improvement to another.

Examples:

SDCs had been paid for three dwelling units on a property and the property is redeveloped with five dwelling units. A credit for three dwelling units' worth of SDCs will be provided, so the amount payable would be the amount for two dwelling units.

SDCs had been paid for two dwelling units and the property is redeveloped with a large retail use, with both residential units eliminated. The SDCs would be the difference between the SDCs payable for the new commercial structure and use and the SDCs that would be charged for two dwelling units.

SDCs were paid based on restaurant use, but then the property was converted to another retail use with lower SDCs. The property is then reconverted back to restaurant use within 10 years of the date a restaurant was last operating, using exactly the same configuration as the original restaurant. At the time of the conversion to retail use, no SDCs are payable, because the amount payable is less than the credit. The credit for restaurant use remains with the property, so at the time of reconversion to restaurant use, no additional SDCs are payable, because the credit remained in effect and the credit for the original use is exactly the same as the amount that is owed, so no payment is required, even if the SDC rates have increased in the interim.

- B. For credit certificates issued under prior SDC ordinances, such credits are to be used by the deadline specified in the ordinance in effect on the date they were issued. Certificates issued without a deadline shall automatically terminate if not used by December 31, 2020.
- C. Notwithstanding subsection (A), credit given against storm drainage SDC assessments for existing use(s) shall be limited to circumstances where SDCs were previously paid or the impervious surfaces existed as of January 1, 2008. A credit may be provided for new development that incorporates improvements designed to reduce the impact of runoff on the storm drainage system (e.g. cisterns, detention facilities, pervious surface technology, etc.). In each case, the city will review the proposed mitigation measures and determine an appropriate storm drainage SDC credit for impervious surface reduction.

- D. A credit of the improvement fee portion of the SDC only shall be given to the permittee against the cost of the SDC charged, for the cost of a qualified public improvement incurred by the permittee, upon acceptance by the city of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.
1. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request shall be filed in writing no later than 60 days after acceptance of the improvement by the city. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this section or if the improvement for which credit is sought is not included in the SDC Project List.
 2. When construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project or otherwise imposed on the same property.
 3. Credits for qualified public improvements may be used for future phases of development, redevelopment, a change in use of the property, or transferred to another property as provided in NMC [12.15.065\(D\)\(6\)](#).*
 1. Credit for qualified public improvements shall not be transferable from one type of capital improvement to another.

2. Credits for qualified public improvements shall be used within 10 years from the date the credit was given.
 3. Credits for qualified public improvements may be transferred from one property to another within the 10 year period the credits are valid if (a) the receiving property is being developed with a residential use and (b) the amount of credit transferred is less than or equal to 50% of the total SDC assessment that would otherwise be payable.*
 4. If the public improvement for which a credit is sought is not on the SDC Project List, the applicant may submit an application for both the credit and for the placement of the improvement on the SDC project list. If the city manager determines that the project is of a type and location that is appropriate for inclusion, the project shall be added to the SDC Project List and a credit may be given, but the additional of the project shall not change the SDC amount payable by others.
 5. The City Council shall conduct a public hearing no later than August 21, 2023, to evaluate the impact of transferred SDC credits on the City's ability to fund qualified public improvements and determine if changes should be made to provisions of this section related to the transfer of SDC credits.*
- D. The extent of the property to be considered in computing and allocating credits shall be stated by the applicant, and the applicant must have written authorization from the property owner(s). If properties under different ownership are developed together, the city may require the applicants to specify where any credits for the provision of capital improvements may be used and under which circumstances. Two or more contiguous properties may pool existing SDC credit rights as part of a common scheme for redevelopment of the contiguous properties.
- E. For all credits under any portion of this section, the property owner is responsible for providing the facts justifying a credit.

12.15.070 Notice

- A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or

modification of a methodology for any SDC. Written notice shall be mailed to persons as provided in this chapter. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the city.

- B. The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

12.15.075 Segregation and Use of Revenue

- A. All funds derived from an SDC are to be segregated by accounting practices from all other funds of the city. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth allowed in this chapter.
- B. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility 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 SDC revenues shall be included in the annual accounting.
- C. The moneys deposited into the SDC account shall be used solely as allowed by this chapter and state law, including, but not limited to:
 - 1. Design and construction plan preparation;
 - 2. Permitting and fees;
 - 3. Land and materials acquisition, including any cost of acquisition or condemnation, including financing, legal and other costs;
 - 4. Construction of capital improvements;
 - 5. Design and construction of new water facilities required by the construction of capital improvements and structures;

6. Relocating utilities required by the construction of improvements;
7. Landscaping;
8. Construction management and inspection;
9. Surveys, soils, and material testing;
10. Acquisition of capital equipment;
11. Repayment of moneys transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;
12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or other indebtedness issued by the city to fund capital improvements.

12.15.080 Refunds

- A. Refunds may be given by the city upon finding that there was a clerical error in the calculation of the SDC.
- B. Refunds shall not be allowed if the applicant fails to timely claim a credit or fails to timely seek an alternative SDC rate calculation.
- C. Refunds may be given on application of a permittee if the development did not occur and the all permits for the development have been withdrawn.

12.15.085 Appeal Procedure

- A. A person challenging the propriety of an expenditure of SDC revenues may appeal the decision of the expenditure to the City Council by filing a written request with the city manager describing with particularity the decision and the expenditure from which the person appeals. An appeal of the expenditure must be filed within two years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the city manager under this ordinance 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 this ordinance and state law. The Council may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only by writ or review.
- D. A legal action challenging the methodology adopted by the City Council shall not be filed later than 60 days after adoption and shall use the writ of review process.

12.15.090 Prohibited Connection

No person may connect to the water or sewer system of the city or obtain a building permit unless the appropriate SDCs have been paid, or the installment payment method has been applied for and approved.

12.15.095 Severability

The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as is such invalid portion thereof had not been included. It is the City Council's intent that this chapter would have been adopted if the unconstitutional provision not been included.

12.15.100 Penalty

Violation of this chapter is a civil infraction.

*(*Chapter 12.15 was amended by Ordinance No. 2135, adopted on July 16, 2018; effective August 15, 2018.)*

(Chapter 12.15 was amended by Ordinance No. 2113; adopted on August 7, 2017; effective September 6, 2017.)

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)



November 13, 2023 Work Session

- Review Draft Affordable Housing CET Code Amendments
- Draft Amendments Establishing a “Custom Creative Work” Light-Industrial Use Category
- Discuss HB 2984, Commercial to Residential Conversions

November 13, 2023 Regular Session

- Motion to Refer Affordable Housing CET Code Amendments to the Council (non-land use)
- Initiate Legislative Amendments to Establish a “Custom Creative Work” Light-Industrial Use Category

November 27, 2023 Work Session

- Initial Review of Land Use Amendments to Facilitate Construction of Needed Housing (Implementing HPS)
- Discuss HOLTE Homebuyer Incentive Program (Implementing HPS)

December 11, 2023 Work Session

- Review Draft Amendments Implementing the Updated Yaquina Bay Estuary Management Plan (w/ DLCD Staff)
- Second Review of Amendments to Facilitate Construction of Needed Housing (Implementing HPS)
- Status of South Beach Island Annexation Project

December 11, 2023 Regular Session

- Initiate Legislative Amendments to Facilitate Construction of Needed Housing (Implementing HPS)
- Hearing on File 1-Z-23, Land Use Amendments to Implement 2023 State of Oregon Legislative Mandates

December 26, 2023 CANCELLED

January 8, 2024 Work Session

- Second Review of Amendments Implementing the Updated Yaquina Bay Estuary Management Plan
- Review HOLTE Legislative Concept for Potential Referral to Council (Implementing HPS)

January 8, 2024 Regular Session

- Public Hearing on Legislative Amendments to Establish a “Custom Creative Work” Light-Industrial Use Category
- Initiate Legislative Amendments Implementing the Updated Yaquina Bay Estuary Management Plan

January 22, 2024 Work Session

- Placeholder for Review of Draft Wastewater Plant Master Plan Update (with City Engineering)

January 22, 2024 Regular Meeting

- Placeholder for Final Development Plan For New Wilder Phase (75 Units)

February 12, 2024 Work Session

- Consideration of Draft Legislative Amendments Implementing the Wastewater Plant Master Plan

February 12, 2024 Work Session

- Placeholder for City Center Revitalization Project Outreach

February 26, 2024 Work Session

- TBD

February 26, 2024 Regular Session

- Public Hearing on Legislative Amendments Implementing the Updated Yaquina Bay Estuary Management Plan