

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 20-1447
CODE CHAPTER 7.04 TO ENABLE METRO	)	
CONSTRUCTION EXCISE TAX FUNDS TO	)	Introduced by Chief Operating Officer
SUPPORT ECONOMIC DEVELOPMENT AND	)	Marissa Madrigal in concurrence with
COMMUNITY STABILIZATION THROUGH	)	Council President Lynn Peterson
THE 2040 PLANNING AND DEVELOPMENT	)	
GRANT PROGRAM	)	

WHEREAS, in 2006, Metro adopted Ordinance No. 06-1115, establishing a construction excise tax (CET) to generate revenue for providing grants to local governments for regional and local planning; and

WHEREAS, following two extensions of the CET in 2009 and 2014, and recognizing the ongoing need for funding regional and local planning, in November 2018 the Metro Council adopted Ordinance No. 18-1425, making the CET a permanent source of revenue; and

WHEREAS, since the inception of the Construction Excise Tax in 2006, Metro has awarded over \$26 million in grants to cities, counties and other government entities in the region to fund critical planning and development activities that support implementation of the region’s long range plan for growth; and

WHEREAS, in order to comply with land use policies of the State of Oregon and Metro, local jurisdictions are required to perform concept planning of lands designated as urban reserves prior to petitioning Metro to include these lands within the urban growth boundary; and

WHEREAS, in order to comply with land use policies of the State of Oregon and Metro, local jurisdictions are required to complete comprehensive plans for new urban areas to enable these areas to develop as complete communities appropriately served with essential infrastructure; and

WHEREAS, planning and development work by local jurisdictions is critical to facilitate development projects that advance equitable outcomes and provide access to opportunity for all residents of the region as the region grows and accommodates more people; and

WHEREAS, meaningful engagement of historically marginalized communities, and particularly communities of color, in local planning and development decisions by local governments is an essential element of building the thriving and equitable communities envisioned in the Region’s 2040 Growth concept; and

WHEREAS, the economic health of the region is inextricably linked to the ability of the region to grow, develop, invest in critical community infrastructure and shape the region’s built and natural environment; and

WHEREAS, the COVID-19 pandemic has had severe economic impacts across the region, and has particularly impacted communities of color; and

WHEREAS, on April 23, 2020, the Metro Council adopted Resolution No. 20-5096, declaring a state of emergency in the Metro Region as a result of the COVID-19 pandemic, and delegating authority to Metro’s Chief Operating Officer; and

WHEREAS, public investments in neighborhoods and equitable access to economic opportunities have a direct relationship to the stability of communities, and public investments can sometimes result in displacement of lower-income residents and communities of color;

WHEREAS, economic development and community stabilization are essential to building complete, equitable communities and supporting regional goals and policies set forth in the 2040 Growth Concept, the Urban Growth Management Functional Plan, and the six desired outcomes outlined in the Regional Framework Plan; now therefore

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. The Metro Code is amended as shown on Exhibit A to expand the purpose of the CET such that Metro may provide funding to facilitate economic development and community stabilization as well as continuing to provide funding for planning and development activities;
2. This Ordinance being necessary to immediately respond to the economic impacts of the COVID-19 pandemic, and in order to expedite the Metro Council's ability to provide funding to facilitate economic development and community stabilization, an emergency is declared to exist and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this 30th day of July, 2020.

*Juan Carlos Gonzalez*

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Juan Carlos Gonzalez, Deputy Council President

Attest:

Approved by:

*Jaye Cromwell*

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Jaye Cromwell

*Carrie MacLaren*

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Carrie MacLaren, Metro Attorney

Exhibit A to Ordinance No. 20-1447

**CHAPTER 7.04**

**CONSTRUCTION EXCISE TAX**

- 7.04.010 Short Title
- 7.04.020 Policy and Purpose
- 7.04.030 Definitions
- 7.04.040 Exemptions
- 7.04.045 Ceiling
- 7.04.050 Rules and Regulations Promulgation
- 7.04.060 Administration and Enforcement Authority
- 7.04.070 Imposition of Tax
- 7.04.080 Rate of Tax
- 7.04.090 Failure to Pay
- 7.04.100 Statement of Entire Value of New Construction Required
- 7.04.110 Intergovernmental Agreements
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- 7.04.150 Refunds
- 7.04.160 Enforcement by Civil Action
- 7.04.170 Review
- 7.04.180 Failure to Pay - Penalty
- 7.04.190 Violation - Penalty
- 7.04.200 Rate Stabilization
- 7.04.210 Dedication of Revenue
- 7.04.220 Procedures for Distribution

**Repealed**

- 7.04.230 Sunset Provision  
[Ord. 18-1425]

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**7.04.010 Short Title**

This chapter shall be known as the "Construction Excise Tax." [Ord. No. 06-1115, Sec. 1.]

**7.04.020 Policy and Purpose**

This chapter establishes a Construction Excise Tax to provide funding for regional and local planning that is required to make land ready for development or redevelopment. [Ord. No. 06-1115, Sec. 1, Ord. No. 18-1425.]

**7.04.030 Definitions**

As used in this chapter:

**Building Official** means any person charged by a municipality with responsibility for the administration and enforcement of a building code.

**Chief Operating Officer** means the person holding the position of Metro Chief Operating Officer established by Section 2.20.010 of the Metro Code.

**Construction** means erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law, whether residential or non-residential. Construction also includes the installation of a manufactured dwelling.

**Contractor** means any person who performs Construction for compensation.

**Improvement** means any newly constructed structure or a modification of any existing structure.

**Major Renovation** means any renovation, alteration or remodeling of an existing building or structure, or portion thereof, residential or non-residential, that requires or receives a building permit.

**Manufactured Dwelling** means any building or structure designed to be used as a residence that is subject to regulation pursuant to ORS 446, as further defined in ORS 446.003(26).

**Person** means and includes individuals, domestic and foreign corporations, public bodies, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

**Value of New Construction** means the total value of the Construction as determined by the construction permit or building permit for the Improvement and/or Major Renovation. [Ord. No. 06-1115, Sec. 1.]

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**7.04.040 Exemptions**

- (a) No obligation to pay the tax imposed by Section 7.04.070 shall be imposed upon any Person who establishes that one or more of the following are met:
  - (1) The Value of New Construction is less than or equal to \$100,000; or
  - (2) The Person who would be liable for the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the Construction is used for residential purposes and the property is restricted to being occupied by people with incomes less than 60 percent (60%) of the median income for a period of 30 years or longer; or
  - (3) The Person who would be liable for the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) and the Construction is dedicated for use for the purpose of providing charitable services to disadvantaged people.
- (b) The Building Official or Chief Operating Officer may require any Person seeking an exemption to demonstrate that the Person is eligible for an exemption and that all necessary facts to support the exemption are established. [Ord. 06-1115, Sec. 1, Ord. No. 18-1425.]

**7.04.045 Ceiling**

Notwithstanding the provisions set forth in Sections 7.04.070 and 7.04.080, if the Construction Excise tax imposed by this Chapter would be greater than \$12,000 (Twelve Thousand Dollars) as measured by the Value of New Construction that would generate that amount of tax, then the Construction Excise Tax imposed for that Construction is capped at a ceiling of \$12,000 (Twelve Thousand Dollars). [Ord. 06-1115, Sec. 1.]

**7.04.050 Rules and Regulations Promulgation**

The Chief Operating Officer shall promulgate rules and regulations necessary for the administration and enforcement of this chapter. [Ord. 06-1115, Sec. 1.]

**7.04.060 Administration and Enforcement Authority**

- (a) The Chief Operating Officer shall be responsible for the administration and enforcement of this chapter. In exercising the responsibilities of this section, the Chief Operating Officer may act through a designated representative.
- (b) In order to carry out the duties imposed by this chapter, the Chief Operating Officer shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths, certify to all official acts; to subpoena and require attendance of witnesses at hearings to determine compliance with this chapter, rules and regulations; to require production of relevant

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documents at public hearings; to swear witnesses; and to take testimony of any Person by deposition. [Ord. 06-1115, Sec. 1.]

**7.04.070 Imposition of Tax**

A Construction Excise tax is imposed on every Person who engages in Construction within the Metro Area. The tax shall be measured by the total Value of New Construction at the rate set forth in Section 7.04.080. If no additional value is created or added by the Construction and if the Construction does not constitute a Major Renovation, then there shall be no tax due. The tax shall be due and payable at the time of the issuance of any building permit, or installation permit in the case of a manufactured dwelling, by any building authority. [Ord. 06-1115, Sec. 1.]

**7.04.080 Rate of Tax**

The rate of tax to be paid for Construction and/or Major Renovation shall be 0.12% of the Value of New Construction. [Ord. 06-1115, Sec. 1.]

**7.04.090 Failure to Pay**

It shall be unlawful for any Person to fail to pay all or any portion of the tax imposed by this chapter. [Ord. 06-1115, Sec. 1.]

**7.04.100 Statement of Entire Value of New Construction Required**

It shall be unlawful for any Person to fail to state or to misstate the full Value of New Construction of any Improvement, Major Renovation, or Manufactured Dwelling. When any Person pays the tax, within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the Value of New Construction of the Improvement, Major Renovation, or Manufactured Dwelling is the Value of New Construction as determined by the Building Official at the time of issuance of the building permit or installation permit. When any Person fails to pay the tax within the time provided for payment of the tax, the Value of New Construction constructed shall be established by the Chief Operating Officer who may consider the Value of New Construction established by the Building Official but may consider other evidence of actual value as well. [Ord. 06-1115, Sec. 1.]

**7.04.110 Intergovernmental Agreements**

The Chief Operating Officer may enter into intergovernmental agreements with other local governments and jurisdictions to provide for the enforcement of this chapter and the collection and remittance of the Construction Excise Tax. The agreements may provide for the governments to retain no more than 5 percent (5%) of the taxes actually collected as reimbursement of administrative expenses, and also for the reimbursement of the government's reasonable, one time, start-up costs as set forth in the agreements. [Ord. 06-1115, Sec. 1.]

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**7.04.120 Rebates**

- (a) The Chief Operating Officer shall rebate to any Person who has paid a tax the amount of tax actually paid, upon the Person establishing that the tax was paid for Construction that is eligible for an exemption under Section 7.04.040.
- (b) The Chief Operating Officer shall either rebate all amounts due under this section within 30 days of receipt of a complete application for the rebate or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.04.140. [Ord. 06-1115, Sec.1.]

**7.04.130 Hearings Officer**

The Chief Operating Officer shall appoint a hearings officer to conduct hearings related to enforcement or appeals of this chapter. All hearings shall be conducted in accordance with rules and regulations adopted by the Chief Operating Officer. [Ord. 06-1115, Sec. 1.]

**7.04.140 Appeals**

Any Person who is aggrieved by any determination of the Chief Operating Officer regarding liability for payment of the tax, the amount of tax owed, or the amount of tax that is subject to refund or rebate may appeal the determination in accordance with Section 7.04.130. All appeals must be in writing and must be filed within 10 days of the determination by the Chief Operating Officer. No appeal may be made unless the Person has first paid the tax due as determined by the Chief Operating Officer. [Ord. 06-1115, Sec. 1.]

**7.04.150 Refunds**

- (a) Upon written request, the Chief Operating Officer shall refund any tax paid to the Person who paid the tax after that Person has established that Construction was not commenced and that any Building Permit issued has been cancelled as provided by law.
- (b) The Chief Operating Officer shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.04.140. [Ord. 06-1115, Sec. 1.]

**7.04.160 Enforcement by Civil Action**

The tax and any penalty imposed by this chapter constitutes a debt of the Person liable for the tax as set forth in Section 7.04.070 of this chapter and may be collected by the Chief Operating Officer in an action at law. If litigation is necessary to collect the tax and any penalty, the prevailing party shall be entitled to reasonable attorney fees at trial or on appeal. The Office of Metro Attorney is authorized to prosecute any action needed to enforce this chapter as requested by the Chief Operating Officer. [Ord. 06-1115, Sec. 1.]

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**7.04.170 Review**

Review of any action of the Chief Operating Officer taken pursuant to this chapter, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved Person may demand such relief by writ of review. [Ord. 06-1115, Sec.]

**7.04.180 Failure to Pay – Penalty**

In addition to any other fine or penalty provided by this chapter, failure to pay the tax within 15 days of the date of issuance of any Building Permit for any Improvement, Major Renovation, or installation permit for any Manufactured Dwelling shall result in a penalty equal to the amount of tax owed or fifty dollars (\$50.00), whichever is greater. [Ord. 06-1115, Sec. 1.]

**7.04.190 Violation – Penalty**

- (a) In addition to any other civil enforcement provided herein, violation of this chapter shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars (\$500.00).
- (b) Violation of this chapter by any officer, director, partner or other Person having direction or control over any Person violating this chapter shall subject each such Person to such fine. [Ord. 06-1115, Sec. 1.]

**7.04.200 Rate Stabilization**

In order to protect against the cyclical nature of the construction industry and development patterns, the Council shall annually as part of the budget process create reserves from the revenues generated or expected to be generated by the Construction Excise Tax, which reserves are designed to protect against future fluctuations so as to promote stability in the funds needed to support required programs. [Ord. 06-1115, Sec. 1.]

**7.04.210 Dedication of Revenue**

Revenue derived from the imposition of this tax after deduction of necessary costs of collection shall be dedicated to fund regional and local planning that is required to make land ready for development or redevelopment, and to provide funding for plans and projects that will facilitate economic development and community stabilization in the Metro region. [Ord. 06-1115, Sec. 1, Ord. No. 18-1425.]

**7.04.220 Procedures for Distribution**

The Chief Operating Officer shall distribute the revenues from the Construction Excise Tax as through grants to local governments, or private entities partnering with local governments, for projects that help implement the region's long range plan consistent with Section 7.04.210. ~~based on an analysis of grant requests for planning or predevelopment work that will implement the region's long range plan. Grants may also be distributed to private entities for projects that are endorsed by a local government and in the public interest.~~ [Ord. 06-1115, Sec. 1; Ord. 09-1220, Sec. 2, Ord. No. 18-1425.]



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**7.04.225 Metro Administrative Fee**

Metro shall retain five percent (5%) of the taxes remitted to Metro for payment towards Metro's administrative expenses. [Ord. 09-1220, Sec. 2; Ord. 14-1328, Sec. 2.]

## **STAFF REPORT**

### **CONSIDERATION OF ORDINANCE 20-1447, FOR THE PURPOSE OF AUTHORIZING ECONOMIC DEVELOPMENT AND COMMUNITY STABILIZATION GRANTS THROUGH THE 2040 PLANNING AND DEVELOPMENT GRANT PROGRAM**

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Date:	July 15, 2020	Presenter(s):	Elissa Gertler
Department:	Planning and Development		Lisa Miles
Meeting Date:	July 23, 2020		
Prepared by:	Lisa Miles	Length:	30 minutes

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## **ACTIONS REQUESTED**

Consideration of Ordinance 20-1447, For the Purpose of Authorizing Economic Development and Community Stabilization Grants through the 2040 Planning and Development Grant Program.

## **IDENTIFIED POLICY OUTCOMES**

Expand purpose of the Construction Excise Tax to include grants for economic development and community stabilization in addition to the program's current purpose, which is to provide funding for regional and local planning that is required to make land ready for development or redevelopment.

Community stabilization refers to plans, activities and programs which allow long term residents and businesses of color in an area to remain in place and thrive, even as major public and private investments in those areas bring changes to the economic and built environment that would otherwise harm those long term residents. Examples of harm may include direct taking of property for public projects, changes to real estate values and rents in the area that make the location unaffordable or displacement of a business' core customer base. Activities to reduce this potential for harm may include affordable housing development, small business assistance programs, development of community serving facilities, culturally-specific placemaking, and property redevelopment that facilitates wealth creation for those threatened with harm or who have been harmed by previous public investments in that area.

## **POLICY QUESTION(S)**

Does the Council wish to expand the purpose of CET funds to include grants for economic development and community stabilization?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

If the Metro Council approves Ordinance 20-1447, Cycle 9 grants, as well as future cycles of grant awards, could fund plans and projects that will advance economic development and community stabilization in addition to the previously established purpose of funding regional and local planning that is required to make land ready for development or redevelopment. If Council does not approve the ordinance, future grant cycles will continue to focus funding on planning that is required to make land ready for development or redevelopment.

## **STAFF RECOMMENDATIONS**

Staff recommend that the Council approve ordinance 20-1447 to enable CET funds to support grants for economic development and community stabilization. CET funding and the 2040 Planning and Development Grant program is a key resource to support local communities. A healthy economy is essential to bring regional plans and community investments to fruition and economic stability for communities of color is a critical component of the resilient and equitable communities that are envisioned in the region's 2040 Growth Concept.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of the proposed Ordinance and a subsequent Resolution awarding grants for economic development and community stabilization will advance Metro's progress towards meeting its racial equity goals. It will enable Metro to provide needed resources to support Black people, Indigenous people, and communities of color, as numerous advocates have requested, to begin to address longstanding economic disparities, at a time when the COVID-19 pandemic has disproportionately affected communities of color.

### ***Legal Antecedents***

- Metro Ordinance 06-1115 ("2006 CET Ordinance) established the construction excisetax
- Metro Ordinance 09-1220 extended the CET for an additional five year period (through September 2014).
- Metro Ordinance 14-1328 extended the CET for an additional five year period (through December 2020) and directed the Metro COO to propose amendments to the existing administrative rules.
- Metro Ordinance 18-1425 amended chapter 7.04 of the Metro Code to remove the sunset provision of the CET

## **ATTACHMENTS**

Ordinance 20-1447 and Exhibit A to the Ordinance