



Metro | *People places. Open spaces.*

*****Notice to Construction Excise Tax Local Jurisdiction*****

September 15, 2009

City of West Linn
Christopher A. Jordan, City Manager
Attn: Nancy L. Davies
Dave Davies
22500 Salamo Road, #100
West Linn, OR 97068

Re: Construction Excise Tax (CET) Collection IGA | Metro Contract No. 927293
New Sunset Date: Extended to September 30, 2014

Dear Mr. Jordan, Ms. Davis and Mr. Davies:

Metro and City of West Linn are parties to the Metro - City of West Linn Construction Excise Tax Intergovernmental Agreement to Collect and Remit Tax ("CET Collection IGA"), which IGA provides that City of West Linn will collect and remit Construction Excise Taxes pursuant to the Metro Construction Excise Tax, Ordinance No. 06-1115. Metro's original sunset date for CET collection was based on when Metro received a net of \$6.3 million, which was expected to occur sometime in the fall of 2009.

On June 11 2009, (effective date September 9, 2009), Metro extended the Construction Excise Tax via Ordinance No. 09-1220. **The new CET sunset date is September 30, 2014.** The extension was supported by an advisory group consisting of a broad-based stakeholder group, including many local jurisdictions, and the CET sunset extension was also recommended by MPAC on May 27, 2009. A copy of Ordinance No. 09-1220 is enclosed for your files.

This letter shall serve as notice that because of the extended CET sunset provision to September 30, 2014, established in Ordinance No. 09-1220, City of West Linn should extend its collection efforts as set forth in the CET Collection IGA to a new sunset date of **September 30, 2014**. All other provisions remain the same.

If you would prefer to execute a formal amendment to the CET Collection IGA with the new sunset date, please have your attorney contact Alison Kean Campbell, Deputy Metro Attorney, Alison.Kean.Campbell@oregonmetro.gov, 503-797-1511, by **September 30, 2009**. Otherwise, we will assume that the extended sunset date of September 30, 2014, is in effect.

If you have any questions please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael Jordan".

Michael J. Jordan
Chief Operating Officer

MGG/sm
Enclosure

cc: Timothy V. Ramis, Esq., Ramis Crew Corrigan LLP

Chapter 7.04

CONSTRUCTION EXCISE TAX

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7.04.010 Short Title

This chapter shall be known as the "Construction Excise Tax."

(Ordinance 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 after its inclusion in the Urban Growth Boundary.

(Ordinance No. 06-1115, Sec. 1.)

7.04.030 Definitions

As used in this chapter:

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

(b) "Chief Operating Officer" means the person holding the position of Metro Chief Operating Officer established by Section 2.20.010 of the Metro Code.

(c) "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.

(d) "Contractor" means any person who performs Construction for compensation.

(e) "Improvement" means any newly constructed structure or a modification of any existing structure.

(f) "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.

(g) "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).

(h) "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.

(i) "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.

(Ordinance No. 06-1115, Sec. 1.)

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 Persons with incomes less than 50 percent (50%) 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 Persons with income less than 50 percent (50%) of the median income.

(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.

(Ordinance No. 06-1115, Sec. 1.)

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).

(Ordinance No. 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.

(Ordinance No. 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 documents at public hearings; to swear witnesses; and to take testimony of any Person by deposition.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 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 as 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.

(Ordinance No. 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.

(Ordinance No. 06-1115, Sec. 1.)

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.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 06-1115, Sec. 1.)

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.

(Ordinance No. 06-1115, Sec. 1.)

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.

(Ordinance No. 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.

(Ordinance No. 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.

(Ordinance No. 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 after inclusion in the Urban Growth Boundary.

(Ordinance No. 06-1115, Sec. 1.)

7.04.220 Procedures for Distribution

The Chief Operating Officer shall distribute the revenues from the Construction Excise Tax as grants to local governments based on an analysis of grant requests submitted by the local jurisdiction which set forth the expected completion of certain milestones associated with Metro Code Chapter 3.07, the Urban Growth Management Functional Plan.

(Ordinance No. 06-1115, Sec. 1. Amended by Ordinance No. 09-1220)

7.04.225 Metro Administrative Fee

Metro shall retain 2.5 percent (2.5%) of the taxes remitted to Metro for payment towards Metro's administrative expenses.

(Ordinance No. 09-1220)

7.04.230 Sunset Provision

The Construction Excise Tax shall not be imposed on and no person shall be liable to pay any tax for any construction activity that is commenced pursuant to a building permit issued on or after the last day of the month five years after the effective date of this amendment to Chapter 7.04; i.e., September 30, 2014.

(Ordinance No. 06-1115, Sec. 1. Amended by Ordinance No. 09-1220)