

## EXHIBIT A

**Chapter 6.08 Construction Excise Tax****6.08.010 Purpose.**

This Chapter establishes a Construction Excise Tax on commercial and residential improvements to provide funding for affordable housing in the City of Portland. Chapter 6.08 of the City Code shall be known as the Construction Excise Tax.

**6.08.020 Definitions.**

As used in this Chapter, unless the context requires otherwise:

**A. “Commercial”** means any structure designed or intended to be used, or actually used, for occupancy for other than residential purposes.

**B. “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 pursuant to the provisions of Oregon law.

**C. “Improvement”** means any improvements to real property resulting in a new structure, additional square footage added to an existing structure, or the addition of living space to an existing structure.

**D. “Median family income”** means median family income by household size for the Portland Metropolitan Statistical Area as defined by the United States Department of Housing and Urban Development as adjusted for inflation and published periodically.

**E. “Net Revenue”** means revenues remaining after the administrative fees described in Section 6.08.130 are deducted from the total Construction Excise tax collected.

**F. “Residential”** means structure designed or intended to be used, or actually used, for occupancy for residential purposes including any residential structure, dwelling, or dwelling unit.

**G. “Value of Improvement”** means the total value of the improvement as determined by the construction permit or building permit for the Improvement. The Bureau will calculate the total value by determining the value per square foot based on building type using the International Code Council Building Valuation Data Tables and multiplying that value by the area of the new structure or additional square footage from the exterior surface of the outside wall.

**6.08.030 Administration and Enforcement Authority.**

**A.** The Bureau of Development Services is responsible for the administration of this Chapter as described in sections 6.08.050 and 6.08.060. In exercising the responsibilities of this section, the Bureau of Development Services may act through designated representatives.

**B.** Except as provided in Subsection 6.08.030 A., the Portland Housing Bureau is responsible for administration and enforcement of this Chapter. In exercising the responsibilities of this Section, the Portland Housing Bureau may act through designated representatives.

#### **6.08.040 Administrative Authority Rulemaking.**

**A.** The Director of the Portland Housing Bureau may adopt procedures, forms and written policies for administering the Construction Excise Tax. Authority granted to the Director of the Portland Housing Bureau under this Chapter 6.08 may be delegated, in writing, to employees or agents of the Portland Housing Bureau. The Director of the Portland Housing Bureau may adopt rules related to matters within the scope this Chapter 6.08, conforming to the intent and purpose of this Chapter 6.08. Adoption of rules by the Director shall follow the procedures set forth in this Section.

#### **B. Permanent rules.**

**1.** Prior to the adoption of a permanent rule, the Director will:

- a.** Publish a notice in a newspaper of general circulation in the City. The notice must be published not less than thirty days before the hearing. The notice must identify the place, time and purpose for the hearing; a brief description of the subjects covered by the proposed rule; the final date for acceptance of written comments; the location to submit comments and the location where copies of the full set of the proposed rules may be obtained. A copy of the notice will be provided to the Office of Neighborhood Involvement at least thirty days before the hearing.
- b.** At the hearing, a designee of the Director will hear testimony and receive written comments regarding the proposed rules. The designee will provide a recommendation to the Director. The recommendation will take into consideration the comments received.
- c.** The Director will review the recommendation of the designee and may either adopt the proposed rule, modify or reject it.
- d.** If a substantial modification is made to the proposed rule, the Director may adopt the modification as an interim Rule or provide additional public review prior to adoption.

**2.** Unless otherwise stated, all rules will be effective two weeks after adoption by the Director.

#### **C. Interim rules.**

- 1.** The Director may adopt interim rules without prior notice upon a finding that a failure to act promptly will result in a serious threat of injury or hazard to the public health or public or private property. The rule will include specific reasons for the finding.
- 2.** Interim rules may be effective for a period of no longer than 180 days.
- 3.** Not more than 30 days after adoption of an interim rule, public notice of interim rules must be given by publication in a newspaper of general circulation and notice sent to the Office of

Neighborhood Involvement. Such notice must also identify the location at which copies of the full set of the interim rules may be obtained.

**D.** All final and interim rules must be filed in the offices of the Portland Housing Bureau's Director. All final and interim rules will be made available to the public at the Development Services Center, and posted on the City's website.

#### **6.08.050 Imposition of Tax.**

**A.** Each person who applies to construct a commercial improvement in the City of Portland shall pay a commercial construction excise tax in the amount of 1 percent of the value of the improvement.

**B.** Each person who applies to construct a residential improvement in the City of Portland shall pay a residential construction excise tax in the amount of 1 percent of the value of the improvement.

**C.** The construction excise tax shall be due and payable prior to the issuance of any building permit by the Bureau of Development Services.

#### **6.08.060 Exemptions.**

**A.** No tax imposed under this Chapter shall be imposed upon the following improvements:

1. Improvements when the value of improvement is less than or equal to \$100,000;
2. Residential housing units 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 a period of at least 60 years following the date of construction of the residential housing;
3. Owner occupied residential properties qualifying under the property tax exemption program under Portland City Code Chapter 3.102.
4. Private school Improvements;
5. Public Improvements as defined in ORS 279A.010;
6. Public or private hospital Improvements;
7. Improvements to religious facilities primarily used for worship or education associated with worship;
8. Agricultural buildings, as defined in ORS 455.315 (2)(a);
9. Facilities 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.

**B.** Until June 30, 2018, no tax shall be imposed under this Chapter 6.08 on accessory dwelling units as defined by PCC 33.910.

**C.** The Portland Housing Bureau may require any person seeking an exemption to demonstrate that the person is eligible for an exemption and to establish all necessary facts to support the exemption.

#### **6.08.070 Failure to Pay.**

The Bureau of Development Services may not issue a building permit to any person who has failed to pay the tax required by Section 6.08.050.

#### **6.08.080 Statement of Entire Value of Improvement Required.**

It is a violation of this Chapter 6.08 for any person to fail to state or to misstate the full value of the improvement.

#### **6.08.090 Interest and Penalties for Failure to Comply.**

**A. Interest.** If the Director of the Portland Housing Bureau determines that a person has failed to pay to the City all or any part of the construction excise tax due under this Chapter 6.08, interest shall be due on the entire unpaid amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the original due date of the fee to the 15th day of the month following the date of the underpayment. Interest amounts properly assessed in accordance with this Section may not be waived or reduced by the Director.

**B. Penalties.** In addition to assessing interest, the Director of the Portland Housing Bureau may assess a penalty of five percent of the otherwise applicable tax liability upon:

1. Any person that initially qualifies for an exemption under Subsections 6.08.060 A.2. and 6.08.060 A.3. and the housing units subsequently fail to qualify for the exemption;
2. Any person who intentionally fails to state the full value of an improvement.

**C. Penalties and interest merged with tax.** Any accrued interest and imposed penalties under the provisions of this Section shall be merged with and become a part of the construction excise tax required to be paid under this Chapter 6.08. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new interest amounts.

#### **6.08.100 Enforcement by Civil Action.**

The construction excise tax, and any assessed interest and penalties, due and owing under this Chapter 6.08 constitutes a debt owing to the City by the person liable for the tax as set forth in Section 6.08.050.

#### **6.08.110 Refunds.**

**A.** The Portland Housing Bureau shall issue a refund to any person who has paid a construction excise tax the amount of the tax actually paid:

1. If the person establishes that the tax was paid for improvements that were otherwise eligible for an exemption under Section 6.08.060.
2. If the person establishes that construction of the improvements was not commenced and the associated building permit has been cancelled by the Bureau of Development Services;
3. Upon a determination by either the Director of the Portland Housing Bureau or the Code Hearings Officer that the amount of any construction excise tax, penalty, or interest has been erroneously collected or paid to the City under this Chapter 6.08.

**B.** The Portland Housing Bureau 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. Claims for refunds shall be made upon forms provided by the Portland Housing Bureau. The request for the refund must be submitted within three years from the date of payment of the construction excise tax.

**C.** Denial of an application for refund may be appealed as provided for in Section 6.08.120.

#### **6.08.120 Appeals.**

**A. Administrative Review.** Any written determination issued by either the Bureau of Development Services or the Portland Housing Bureau applying the provisions of this Chapter 6.08, believed to be in error may be reviewed by the Director of the Portland Bureau of Housing if requested in writing by the recipient. The request for administrative review must be received within 10 days of the determination, and must include all documentation supporting the request. The Director's determination in the administrative review shall be served by regular mail.

**B. Appeals.** Any written determination from either the Bureau of Development Services or the Portland Housing Bureau applying the provisions of this Chapter 6.08 regarding liability for payment of construction excise taxes, the valuation of may appeal such determination of the Director to the Code Hearings Officer of the City as provided in Chapter 22.10 of this Code.

**C.** The filing of any notice of appeal shall not stay the effectiveness of the written determination unless the Code Hearings Officer so directs.

#### **6.08.130 Dedication of Revenue.**

**A.** The Bureau of Development Services may retain up to 4 percent of the taxes collected for payment towards the Bureau's administrative expenses related to collection and distribution of the tax.

**B.** For the tax imposed on residential improvements, the net revenues will be distributed as follows:

**1.** Fifteen percent of net revenue will be remitted to the Oregon Department of Housing and Community Services to fund home ownership programs.

**2.** Fifty percent of net revenue will be transferred to the Portland Housing Bureau Inclusionary Housing Fund to fund finance-based incentives for programs that require affordable housing.

**3.** Thirty-five percent of net revenue will be transferred to the Housing Bureau Inclusionary Housing Fund to support the production and preservation of affordable housing units at and below 60 percent median family income.

**C.** For the tax imposed on commercial improvements, 100 percent of net revenue will be distributed to the Housing Bureau Inclusionary Housing Fund to support the production and preservation of affordable housing units at and below 60 percent median family income.