

Appendix C: Construction Excise Tax Implementation Roadmap

How It Works

In 2016, the Oregon Legislature passed Senate Bill 1533 which permits cities to adopt a construction excise tax (CET) on the value of new construction projects to raise funds for affordable housing projects. The statute permits a maximum rate of 1% of permit value on residential construction and does not limit the rate on commercial and industrial construction. The adopting jurisdiction selects the rate within these constraints. Many communities in Oregon are exploring the application of CET for housing projects, because the tool can provide a locally-generated, dedicated source of funds for affordable housing programs and developer incentives.

The allowed uses for CET funding are defined by the state statute. The City may retain 4% of funds to cover administrative costs. The net revenue after deducting administrative costs must be allocated as follows, if the City uses a residential CET:

- 50% must be used for developer incentives (e.g., fee and SDC waivers, tax abatements, etc.)
- 35% may be used flexibly for affordable housing programs, as defined by the jurisdiction.
- 15% flows to Oregon Housing and Community Services for homeowner programs.

If the City implements a CET on commercial or industrial uses, 50% of the net revenue must be used for local housing programs, as defined by the jurisdiction, and the remaining 50% are unrestricted.

The statute exempts public buildings, regulated affordable housing, places of worship, public and private hospitals, agricultural buildings, and nonprofit long-term care facilities, residential care facilities, and continuing care retirement communities.² The City can exempt other types of development if desired (e.g., small developments under a certain size or permit value). The tax applies only to new construction and additions or remodels that add square footage.

Construction Excise Taxes in Oregon¹

As of 2020, the following Oregon cities have adopted a CET:

- Portland
 - Corvallis
 - Tillamook County
 - Cannon Beach
 - Hood River County
 - Hood River City
 - Newport
 - Medford
 - Milwaukie
 - Bend (*grandfathered program from before legislation*)
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¹ This list is based on ECONorthwest research as of April 2020 and may not be exhaustive.

² Oregon Revised Statute 320.173

Pros

- Flexible funding source, especially for funds derived from commercial/industrial development.
- Can be blended with other City funds to maximize impact.
- Ability to link industrial or other employment investments, which generate new jobs and demand for new housing, with funding for housing development.
- Allows some use of funds for administration; can fund staff time needed to administer programs.

Cons

- CET increases development costs in an environment where many developers are already seeking relief from systems development charges, so it would have impact on project feasibility.
- Where demand is high relative to supply, may be passed on in whole or in part through higher housing costs or higher rents for tenants in new buildings.
- Revenue will fluctuate with market cycles and will not be a steady source of funding when limited development is occurring.

Application in Wilsonville

This section outlines the broad steps that the City might take in evaluating the establishment of a CET in the City.

1. Develop and Analyze Program Scenarios

To better understand and select among the options available through the statutes, the City should evaluate a number of scenarios that are tailored to the Wilsonville market and the specific program design.

- Should the CET apply to both residential and commercial / industrial development?
- What rate would be appropriate for each type of development included, balancing revenue generation with impacts to development feasibility?
- What exemptions might the City want to establish, in addition to those required under statute (see above)? For example, would the City want to exempt projects under a certain size or permit value, certain housing types, or a broader definition of affordable housing?

Using the historical and projected residential building permit values, the City could analyze the average revenue it would generate with a CET by use, per the statutory rate cap and spending limitations.

	Residential	Commercial/Industrial
Rate Cap	The statutory rate cap is 1%. The City could look at rates of 0.5% to 1% of permit value.	Given that the rate is uncapped, the City could evaluate a range of CET rates (e.g., 0.5%, 1%, 2%, and 5%).
Spending Limitations	50% - developer incentives 35% - affordable housing programs, as defined by the jurisdiction 15% - Oregon Housing and Community Services for homeowner programs	50% - developer incentives 50% - unrestricted

Source: Oregon Revised Statutes 320.195 (4)

A key question for the program structure will be how the City can structure the CET so that it would not provide a great disincentive to new market-rate development that would otherwise pencil without the CET.

2. Determine How the City Would Use CET Revenues

Because CET is dependent on new construction, revenue will vary with market cycles. The City should consider reasonable assumptions for budgeting purposes and define priorities for the portion of the revenue that may be used flexibly. Consistent with implementation of this Plan’s actions, Council would determine what types of incentives it would want to fund with the money dedicated to developer incentives (e.g., a tax abatement, SDC waiver, direct grants, land write-downs, etc.), funds for affordable housing, and any unrestricted funds.

If the City were to establish a CET on commercial and industrial development, there may be demand from other City priorities and programs for the unrestricted portion of the revenue, which would reduce the amount available for affordable housing. The City could consider dedicating CET to actions that are focused on reducing displacement that could also withstand the variability in CET revenue generation, such as emergency short-term rent vouchers.

As part of these conversations, the City should consider how it would administer the program, and what staffing and partnerships would be needed to implement the programs identified.

3. Seek Stakeholder Input

The City should seek input from local developers and business leaders regarding the potential impact of a CET on development activity and business recruitment. To ground these conversations, the City can evaluate recent development examples and calculate what the CET costs would have been. It may also be helpful to conduct additional outreach to affordable

housing providers to help the City understand how best to administer funding if a CET is adopted.

4. If Applicable, Carry Out Adoption Process

If the City chooses to adopt a CET, it must pass an ordinance or resolution that states the rate and base of the tax.³ Most communities also identify any further self-imposed restrictions on the use of funds as part of the adopting ordinance (e.g., establishing that the housing programs will support housing affordable up to a certain percentage of area median income, or specifying the allowed uses of unrestricted funds). If the ordinance passes, the City must then establish a process to distribute the funds.

³ ORS 320.192