



Study Session

SS

Milwaukie City Council



**MILWAUKIE CITY COUNCIL
STUDY SESSION**

City Hall Conference Room
10722 SE Main Street
www.milwaukieoregon.gov

**REVISED AGENDA
JULY 28, 2016**

(Revised July 25, 2016)

A light dinner will be served.

Page #

- 1. 6:00 p.m. Community Engagement and Involvement**
Staff: Mitch Nieman, Assistant to the City Manager
- 2. 7:00 p.m. Web Refresh Update**
Staff: Mitch Nieman, Assistant to the City Manager
- 3. 8:00 p.m. Establishment of a Construction Excise Tax (CET) to Fund Affordable Housing Initiatives** **1**
(Staff Report Added July 25, 2016)
Staff: Alma Flores, Community Development Director
- 4. 9:00 p.m. Adjourn**

Meeting Information

The time listed for each item is approximate; the actual time each item is considered may change due to the length of time devoted to the previous item. The Council may vote in Work Session on non-legislative issues.

Public Notice

Executive Sessions: The Milwaukie City Council may meet in Executive Session immediately following adjournment pursuant to ORS 192.660(2). All Executive Session discussions are confidential and those present may disclose nothing; representatives of the news media may attend as provided by ORS 192.660(3) but must not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

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MINUTES
MILWAUKIE CITY COUNCIL
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STUDY SESSION
JULY 28, 2016
City Hall Conference Room

Mayor Gamba called the Study Session to order at 6:00 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Public Affairs Specialist Jordan Imlah, Program Services Specialist Jason Wachs, Sustainability Director Clare Fuchs, and Community Development Director Alma Flores

Community Engagement and Involvement

Mr. Nieman provided an overview of the City's community involvement and engagement program, **Mr. Wachs** explained the engagement spectrum developed by the International Association of Public Participation (IAP2), and **Mr. Imlah** discussed the City's local and regional advertising efforts.

Councilor Parks and **Mr. Nieman** discussed the City's advertisements in the answer and culture guides regularly featured in the *Clackamas Review* newspaper.

Mr. Nieman, **Mr. Wachs**, and **Councilor Churchill** talked about the recruitment process for the City's board, committee, and commission (BCC), Neighborhood District Association (NDA), and project advisory committees (PACs).

Mr. Wachs reported that attendance at the quarterly NDA Leadership meetings has been consistent and provided a review of the City's NDA program.

The group noted which NDAs maintain their own websites and which NDAs are active on social media. **Mr. Nieman** reported that the logos for the Historic Milwaukie and Linwood NDAs had recently been updated.

Mr. Wachs continued his review of the City's NDA program noting his weekly outreach effort to NDA leaders and value of the NDAs in the community. He confirmed that the NDAs periodically receive updated mailing lists.

The group noted how some NDAs have used their address and email mailing lists to announce events and reach out to residential and commercial neighbors.

Mr. Nieman and **Mr. Wachs** reviewed the current PACs, explained how the Adopt-A-Road program is administered, and noted that 9 groups had adopted roads to-date. They reported that the Drive Less Save More program was in the wrap-up phase and would issue a final report in the fall of 2016. They provided an overview of the temporary event permit process for City and non-City events.

The group discussed groups and events that receive blanket temporary event permits for recurring or ongoing activities. It was noted that NDAs have not been required to request permits for annual picnics since most don't require sidewalk or street closures.

Mr. Nieman, **Mr. Wachs**, and **Mr. Imlah** explained how the City's social media outlets are used to promote City and non-City events. They remarked on the possibility that the new City website would feature a more robust community calendar.

Mr. Nieman and **Council President Batey** noted the use of the City Hall information kiosk calendar and bike repair station and the possibility of adding a kiosk and bike

repair station near the Triangle Site Food Cart Pod. **Councilor Parks** remarked on the possibility of including a kiosk and bike repair station in the City's Wayfinding Plan.

Mr. Imlah and **Mr. Nieman** discussed trends in social media and the City's approach to different emerging platforms noting the recent photo contest. **Mr. Nieman** reported that several BCCs were looking at ways to use social media. **Mayor Gamba** and **Mr. Nieman** discussed potential City use of the social media website Reddit.

Mr. Nieman reviewed a recent staff analysis of the City's comprehensive engagement and involvement program which noted strengths, weaknesses, opportunities, and threats. **Mayor Gamba** and **Mr. Nieman** commented on a new mobile phone application he saw demonstrated at a smart growth seminar.

Mr. Nieman, Mayor Gamba, Mr. Monahan discussed the need to improve the City's BCC and NDA leadership succession planning and recruitment processes. **Mr. Nieman** commented on the challenges of staff being in separate buildings and noted the need to improve the City's volunteer tracking software.

The group commented on the possibility of having a tablet device and business cards available for Council and staff to use at events to recruit BCC and NDA volunteers.

Mr. Nieman and **Mayor Gamba** remarked on the need to budget additional funding to enhance the City's BCC, special events, and advertising capabilities.

Mr. Nieman and **Mr. Imlah** discussed the City's identity and brand in relation to the ongoing visioning process and reported that loss of institutional memory is a threat to the City's community involvement and engagement program.

Council President Batey, Mr. Nieman, and Mayor Gamba discussed doing more to promote proclamation causes and issues through the City's social media outlets.

Mr. Nieman continued the overview of the analysis of the City's comprehensive engagement and involvement program noting weaknesses including the lack of a social services portal, community trust issues, and the Council goal setting process.

The group discussed the importance of Council goal setting, the status of the goals identified in 2015, and the need to engage community goal champions to hold the City accountable. They remarked on the value of community surveys.

Mr. Nieman and **Mr. Imlah** reported that there was ongoing community support for the City's newsletter, *The Pilot*, and noted recent changes to the newsletter.

Mr. Nieman and **Mr. Wachs** discussed the success of the last volunteer appreciation dinner and the upcoming effort to recruit new volunteers.

The group discussed the need to amend the BCC bylaws to align when terms expire and the possibility of acquiring software to streamline the volunteer tracking system.

Mr. Nieman reported that the engagement and involvement program analysis recommended initiating a Youth Council, identifying the needs of the development opportunity sites, strengthening internal communications, and conducting audits of the City's BCCs and NDAs. **Mr. Wachs** remarked on the challenges of neighborhood associations and suggested that the City define its expectations for NDA success.

The group noted that the Milwaukie Police Department (MPD) monitors the Next Door mobile phone application and they discussed the increased activity in Downtown Milwaukie due to the popularity of the Pokémon mobile phone application.

Mr. Nieman remarked on the role of **Mr. Wachs** to nurture NDA and community programs and the possibility of Council supporting a future staff augmentation for the community engagement and involvement program.

Councilor Churchill expressed support for auditing the NDA program. **Mr. Nieman** and **Mayor Gamba** discussed when to schedule a Council and NDA Leadership meeting.

Web Refresh Update

Mr. Nieman provided an update on the City website refresh project and reported that staff was working to launch the new website soon with some sort of an unveiling event.

The group commented on the City logo used on the polos worn by staff.

Establishment of a Construction Excise Tax (CET) to Fund Affordable Housing Initiatives

Ms. Flores and **Mayor Gamba** introduced Mary Kyle McCurdy, Deputy Director of 1,000 Friends of Oregon, and **Ms. McCurdy** noted the participation of Mayor Gamba in the legislative process that resulted in the passage of Senate Bill 1533B (SB1533B).

Ms. Flores reviewed recent local and state legislation regarding inclusionary housing and reviewed definitions outlined in SB1533B. **Ms. Flores**, **Mayor Gamba**, and **Council President Batey** noted differences in affordable housing laws in different states.

The group discussed how median income is established and if the median income for Clackamas County is representative of the median income in Milwaukie.

Ms. Flores, **Mayor Gamba**, and **Ms. McCurdy** discussed the impact of the City allowing developers to pay a fee in-lieu of building affordable housing.

Ms. Flores and **Ms. McCurdy** noted possible inclusionary zoning incentives the City could offer and cited cities in Oregon that utilize property tax benefits to encourage multi-unit developments. **Ms. Flores** noted that the City does not have a property tax exemption program and that the City of Portland has established a task force to investigate possible developer incentive programs.

Ms. Flores provided an overview of SB1533B noting that the legislation clarifies, modifies, and adds language to Oregon Revised Statute (ORS) 320.170 and allows cities and counties to levy CETs.

Council President Batey, **Ms. McCurdy**, and **Mayor Gamba** discussed how the City could use CETs to encourage inclusionary housing and noted the uncertain consensus regarding whether a CET could be adopted without inclusionary housing zoning.

Ms. Flores reported that SB1533B established CET parameters primarily on residential construction and noted how the City of Portland has applied a CET on residential, commercial, and industrial development. **Ms. McCurdy** and **Ms. Flores** confirmed that there was no State-mandated tax cap for commercial or industrial developments, but there is a cap for residential development.

Ms. Flores and **Ms. McCurdy** explained that CET revenues would be allocated for administrative costs, affordable housing projects, and developer incentives.

Ms. Flores discussed examples of developer incentives, how the CET could be distributed for commercial and industrial uses, and noted that the City is required to observe certain State exemptions.

The group discussed exempted additional dwelling units (ADUs) and how a developer may choose to parcel multiple permit applications to avoid paying the CET.

Ms. Flores presented and discussed city maps showing zone capacity for cottage clusters and residential capacity by number of units, and a handout with fictional revenue projections based on a Portland-style CET program established 10 years ago.

The group noted projects over the last 10 years that would have impacted CET revenues and discussed how other Oregon cities and counties may apply a CET.

Ms. Flores asked for Council direction on whether or not staff should pursue a CET program and whether or not inclusionary housing should be included.

Mayor Gamba suggested that inclusionary housing should be included in a City program and expressed support for pursuing a CET. **Ms. McCurdy**, **Mayor Gamba**,

and **Council President Batey** discussed whether or not the intent of SB1533B was to tie CETs with incentives for inclusionary zoning and how the City could apply an inclusionary housing program.

Ms. McCurdy suggested that an upside of adopting an inclusionary housing policy was that builders could include it in the price of the land. She noted that an inclusionary housing policy could be tailored to fit the community.

Ms. Flores and **Ms. McCurdy** discussed the recent work of the economics and planning firm ECONorthwest in examining the importance of developer incentives in inclusionary zoning programs. **Mayor Gamba** remarked that it would make sense to adopt a CET and wait to set-up an inclusionary zoning program. **Ms. McCurdy** noted that the City would have to offer an in-lieu of fee with a CET and **Ms. Flores** reported that the City of Portland had preferred to not offer the in-lieu of fee.

Ms. Flores reported that another question for Council to consider was whether CET revenues would go into the General Fund or a dedicated housing fund. **Council President Batey** expressed support for setting-up a dedicated housing fund.

Mayor Gamba expressed support in pursuing a CET and an inclusionary zoning program after a CET had been in place for a while.

Councilor Churchill asked for more economic modeling and noted that he had questions regarding scalability and incentives of a CET program. **Ms. Flores** remarked that the City of Portland had barely discussed inclusionary zoning criteria.

Council President Batey reported that she was in favor of creating a CET and noted concern about other taxes and suppressing development. **Councilor Churchill** noted concerns about bringing down property values and the lack of interest in existing development opportunity sites. **Council President Batey** agreed that it made sense to put an inclusionary zoning program on a slower track.

Councilor Parks stated her support for a 2 phase approach of adopting a CET and then considering an inclusionary zoning program.

Mayor Gamba summarized that Council was supportive of moving forward on a CET, and **Ms. Flores** noted that a draft CET ordinance could be prepared in the fall of 2016.

The group noted that considering a CET ordinance in late fall would allow time to collect information on other CET programs being considered by other jurisdictions.

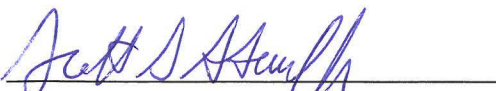
Mayor Gamba and **Councilor Parks** expressed support for setting-up a dedicated housing fund to track CET revenue.

Mayor Gamba asked about the type of bank account a housing fund could be deposited, and **Ms. Flores** and **Mr. Monahan** noted that the type of bank account would be a City policy decision for Council to consider.

Mayor Gamba and **Ms. McCurdy** remarked on the probability that the State Legislature would revisit inclusionary housing during the 2017 session.

Mayor Gamba adjourned the Study Session at 8:47 p.m.

Respectfully submitted,



Scott S. Stauffer, City Recorder



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **SS 3.**
Meeting Date: **July 28, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Study Session to Discuss Establishment of a Construction Excise Tax to Fund Affordable Housing Initiatives**

From: Alma Flores, Community Development Director

Date: July 14, 2016

ACTION REQUESTED

Discuss the establishment of a Construction Excise Tax to fund affordable housing initiatives. Key questions for City Council to consider include: Does City Council want to pursue a Construction Excise Tax? If yes, does City Council want to establish an inclusionary housing fund for revenues or have revenues go into the General Fund that is monitored for compliance with the enabling legislation?

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

No prior actions have been taken regarding Inclusionary Zoning and a Construction Excise Tax (CET) in the City of Milwaukie.

The City has pursued other avenues of promoting affordable housing to address the evolving housing shortage. In response to the housing shortage throughout the region, the City began more closely monitoring the situation at the end of 2015 and in early 2016. City Council heard a panel of housing experts from the region at the March 29, 2016 Study Session. These housing experts discussed the state of housing and its impacts on the community as well as the housing related legislation that had recently been approved by the State. At the April 5, 2016 City Council meeting, City Council continued to discuss the topic. On April 19, 2016, City Council adopted a resolution granting the legislative authority to declare a housing emergency and adopted an ordinance requiring a 90-day no cause eviction notification for tenants.

BACKGROUND

Since 1999, Oregon jurisdictions have been prohibited from enacting mandatory inclusionary policies. However, in February 2016, the Oregon Legislature approved Senate Bill 1533 that allows inclusionary zoning and ends a state ban on construction excise taxes. The Bill allows cities and counties to adopt land use regulations or impose conditions for approval of permits that require designation for sales or rent as affordable housing for up to 20 percent of multifamily structures in exchange for developer incentives. This approved law currently only applies to buildings with 20 or more units.

Per Senate Bill 1533 CET funds must be spent the following way:

- Fifty percent to fund developer incentives for inclusionary zoning (which could include, but are not limited to, increasing the number of affordable housing units in a

development and/or building affordable units for households who have qualifying incomes below 80% median family income);

- Fifteen percent distributed to the Housing and Community Services Department to fund home ownership programs; and
- Thirty five percent for programs and incentives of the city or county related to affordable housing.

According to Housing Land Advocates, inclusionary zoning, or inclusionary housing as it is also known, is a land use practice that requires affordable housing units to be built along with market rate housing, typically in new developments. Inclusionary policies developed in response to so-called “exclusionary zoning” practices that were common throughout much of the 20th century, in which low cost and multi-family housing was banned from many communities. These practices also often exclude minorities and other members of federally protected classes, perpetuating segregation and even violating fair housing law.

Over the last several years, strong job growth and in-migration in the Portland metropolitan region has resulted in significant increases in rental prices and a significant decrease in the vacancy rate for rental units. For the 12 month period ending in December 2015, US Census data shows that the metropolitan region had the highest rent increase (11.3%) and lowest vacancy rate (2.4%) in the nation.

What began as a problem primarily for the City of Portland has rapidly become a crisis for the entire region, one which has garnered intense media coverage over the past year. As residents have been pushed out by Portland’s high rents, many have sought more affordable homes in close proximity to Portland. In short time, Milwaukie’s location and improved mass transit options have made it a popular location for renters. Personal accounts from local residents of rent increases of up to and above 25% have become common in Milwaukie, many of which have been relayed on to the Mayor and City Council.

CONCURRENCE

No concurrence is needed at this time. If City Council decides to proceed with an ordinance for a Construction Excise Tax, staff will work with the city attorney to develop language for a proposed ordinance and resolution and continue to work with the City Manager, Planning Director, and Building Official for concurrence to properly implement the incentive. Staff will also work with the Finance Department to ensure proper fiscal controls to manage the revenue.

FISCAL IMPACTS

If a Construction Excise Tax is pursued, the fiscal impacts will include staff time to develop and implement an ordinance as well as to create an Inclusionary Housing Fund. Once a program is in place, fiscal impacts will include the collection of a fee to fund future affordable housing initiatives and other specified uses.

WORK LOAD IMPACTS

If a Construction Excise Tax is pursued, the fiscal impacts will include staff time to develop and implement an ordinance.

ALTERNATIVES

City Council could choose to take no action or research other options for action by the City.

ATTACHMENTS

1. Senate Bill 1533
2. Article "Senate Bill 1533 – Oregon Jurisdictions May Allow Inclusionary Zoning in Narrow Circumstances," www.northwestlandlawforum.com, March 23, 2016

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

GARVEY SCHUBERT BARER

Northwest Land Law Forum

Land Use | Condemnation | Real Estate



Senate Bill 1533 – Oregon Jurisdictions May Allow Inclusionary Zoning In Narrow Circumstances

By Jennifer Bragar on March 23, 2016

Posted in [Inclusionary Zoning](#)



As part of a four-bill package – SB 1533, SB 1573, HB 4143, and HB 4079 – the Speaker of the House, Tina Kotek used the short session to try and push housing advocates’ agenda forward, but the bills got hijacked by development interests. This post explores the so-called inclusionary zoning bill, Senate Bill 1533. Inclusionary zoning is a planning tool that requires new housing developments to offer a portion of the new units at affordable levels for purchase or rent.

Housing advocates never expected inclusionary zoning to singularly solve the affordable housing crisis, but hoped it would be one avenue to create equitable neighborhoods. The hope was to have affordable housing placed in all neighborhoods, near transit options, fresh food, and quality schools. But, at the end of the day, Oregon jurisdictions are left with little in the way of mandating inclusionary housing, except for possibly, the City of Portland.

In most inclusionary zoning programs across the country, the threshold sale or rent level is left to the local government to decide and is often set at 60% of the median family income as determined by the Department of Housing and Urban Development. Under SB 1533, affordable housing is defined as housing where rents are set at 80% or above of the median family income for the county in which the housing is built, and it is at that level where local governments can impose the affordability requirement. For example, in 2015, Multnomah County’s 80% median family income for a family of three was \$52,950 and corresponded with rental limits for a two-bedroom unit of \$1,323 per month. In comparison, the 60% median family income for a family of three in 2015 was \$39,720 and rental limits for a three-bedroom unit were \$1,051 per month. Thus, SB 1533 artificially reduces the populations that can be served by inclusionary zoning programs, and acts to exclude people who cannot afford \$300 in additional rent per month.

The authorization under SB 1533 to impose the requirement to construct affordable units to offer to the 80% median family income group, requires that the new construction is a multi-family structure. The definition of multifamily structure is really where Senate Bill 1533 got lost in translation. The multifamily structure definition is a structure with three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit. However, inclusionary zoning requirements can only be imposed on multifamily structures that contain at least 20 housing units. Most cities in Oregon do not support this kind of high density development occurring within single structures, and those that do will face development proposals that artificially reduce density below 20 units to avoid inclusionary zoning impacts.

Moreover, developers must be provided with the option of paying an “in lieu fee” to avoid building inclusionary units. This in lieu fee option further erodes the equity factor that housing advocates sought because the city or county is under no obligation to use those fees to create housing in particular neighborhoods. Further, the efficiencies of inclusive housing are lost when the developer – schooled in construction of housing – can add units to a project at lower cost than government funded housing developments.

In addition, SB 1533 offers cities and counties the ability to impose a construction excise tax on those projects that add new residential structures or additional square footage in an existing residential structure, in residential zones; and commercial and industrial zones. The tax may not exceed the low percentage of 1% of the permit valuation for residential construction permits. However, the funds raised through the excise tax in residential zones must be used in the following manner:

- 50% to fund developer incentives for inclusionary zoning (which could include, but are not limited to, increasing the number of affordable housing units in a development and/or building affordable units for households who have qualifying incomes below 80% median family income);
- 15% distributed to the Housing and Community Services Department to fund home ownership programs; and
- 35% for programs and incentives of the city or county related to affordable housing.

Some have suggested that in those cities or counties where inclusionary zoning will never occur, the jurisdiction must still adopt an inclusionary zoning ordinance in order to adopt an excise tax for residentially zoned property, and 50% of those funds must be held aside until a qualifying project comes along. It is unclear how this provision will play out.

The use of excise tax funds raised in commercial and industrial zones are less restrictive than those funds raised in residential zones. The only restriction on the use of these funds is that 50% of the funds raised must be used for housing.

What should have been straightforward overturning of Oregon’s statutory ban on inclusionary zoning, instead became a closed loop system for multifamily developers – offering extensive incentives to entice developers to construct inclusionary units; and collecting taxes from developers and redistributing them among the very same developers through the construction excise tax. Instead of giving local governments the option to create inclusionary zoning programs that work in their neighborhoods, it is likely that only the City of Portland will be able to impose a workable inclusionary system – and it will be at least six more months before we know what the City’s program could entail.

SB 1533B

(Bill Title: Relating to affordable housing; and prescribing an effective date)

Summary Points
July 22, 2016



SB 1533B allows cities to require a certain portion of new housing units are rented or sold as affordable (a policy known as “inclusionary zoning”), subject to parameters set out in the bill, and allows cities and counties to enact a Construction Excise Tax.

The following is a summary of the key provisions of this bill by section.

Section 1: Inclusionary Zoning

Local governments – cities or counties – may adopt land use regulations, functional plan provisions, or permit conditions that establish the sale or rental price of housing units within the following parameters:

- May require that up to 20% of units within a multifamily structure are sold or rented as affordable
 - “Affordable housing” is defined as housing units affordable to households with incomes at 80% of the area median income or above
- Applies to for sale or rental units in multifamily structures of 20 units or more

Section 1: Inclusionary Zoning *cont'd.*

- “Multifamily structure” is defined as a structure with three or more contiguous units
- Must provide the option of an in-lieu fee, in an amount determined by the city or county, that developers can pay instead of building the required affordable units
- Must offer at least one of the following incentives
 - Whole or partial fee waivers or reductions
 - Other finance-based incentives
 - Full or partial property tax exemptions

Section 1: Inclusionary Zoning *cont'd.*

- Property tax exemptions created under state statutes for units under 60% AMI will apply to any locally mandated affordable units sold or rented at 80% of AMI or less.
- May offer optional incentives:
 - Density adjustments
 - Expedited permitting
 - Modification of height, floor area, & other site-specific requirements
 - Other incentives

Local governments can still adopt voluntary incentives to increase the supply of affordable units, including incentives to increase the number of affordable units or deepen the affordability of units that are required under mandatory inclusionary zoning policies. Policies enacted under this section shall only apply to new developments that have not already submitted a permit application. “Clear and objective standards” regulating affordable housing units shall apply to all jurisdictions outside of Metro.

Section 2 through 7:

Clarifies, modifies, and adds language to ORS 320.170 to 320.189, the section which allows cities and counties to impose a Construction Excise Tax (CET). SB 1533 maintains: school districts' current authority to impose a CET, the grandparenting of CETs existing in 2007, including Metro's, and the moratorium on local government CETs except as provided in ORS 320.170 to 320.189.

Section 8: Construction Excise Tax

Establishes a new authority for cities and counties (not Metro) to impose a Construction Excise Tax on construction of new structures or construction adding square footage to an existing structure. Cities and Counties may impose a CET on:

- Residential construction, at a rate of 1% of the value of the permit value of the construction
- New commercial and industrial construction, with no cap on the rate of the CET

Section 9: CET revenue allocation

The local government imposing the CET may retain 4% of the CET revenues as a fee for administering the tax. After this fee, the residential CET revenues are to be distributed as follows:

- 50% to developer incentives as set out in Section 1 of the bill
- 15% to Housing and Community Services Department to fund homeownership programs that provide down payment assistance
- 35% for affordable housing programs and incentives as defined by the local jurisdiction

For a CET imposed on commercial or industrial development, 50% of revenues after the administrative fee must be expended on programs related to housing

Section 10: Repeals Section 9, Ch. 829, Oregon Laws 2007

Section 11: A city or county must wait 180 days after the effective date of this act to enact any regulations under this act.

Section 12: The act takes effect on the 91st day after adjournment of the 2016 legislative session.

Construction Excise Tax— Portland Example

- **Residential tax of 1%** of permit valuation on new residential development
- **Commercial tax of 1%** of permit valuation on new commercial development

Construction Excise Tax

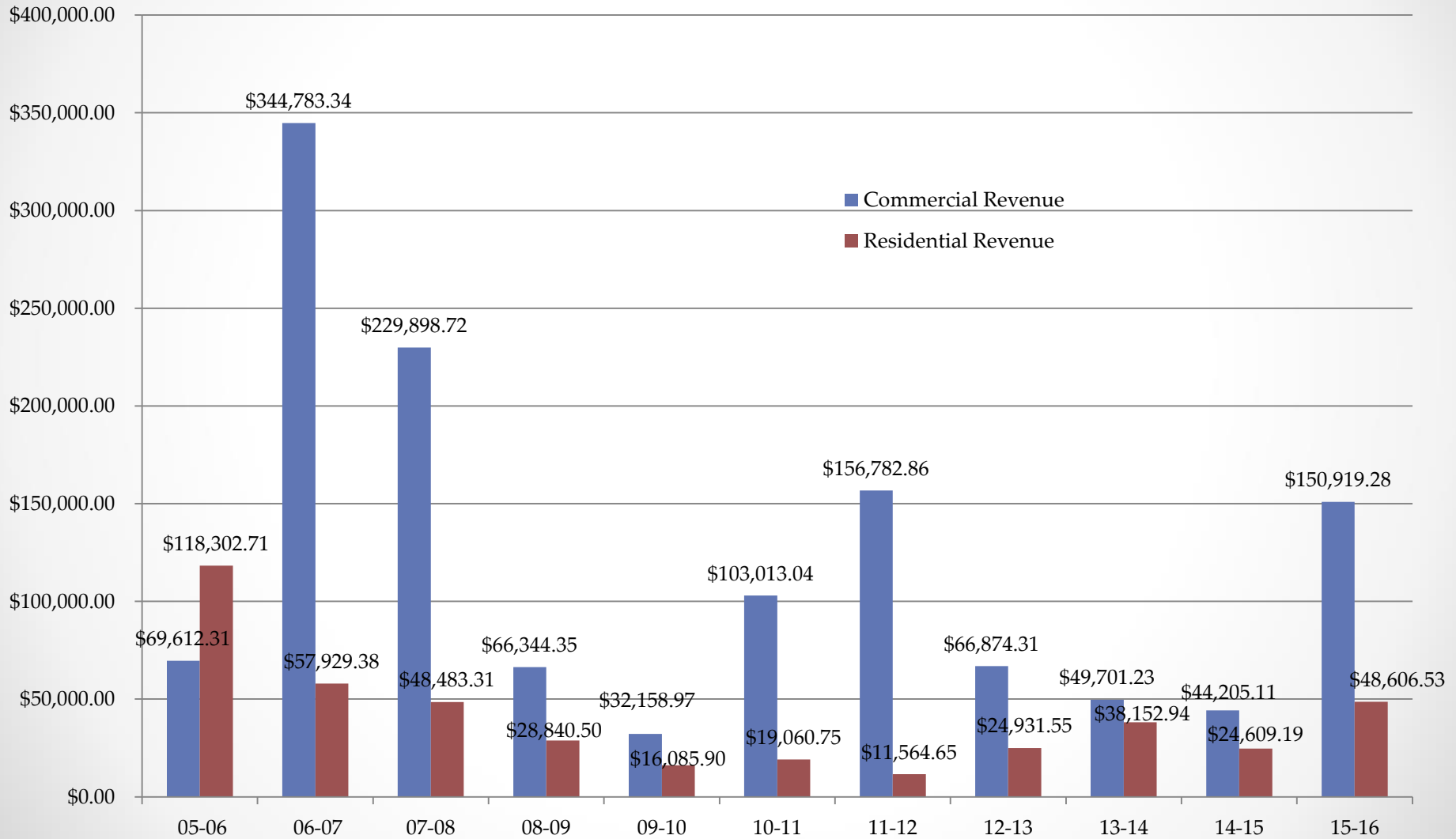
Portland Example

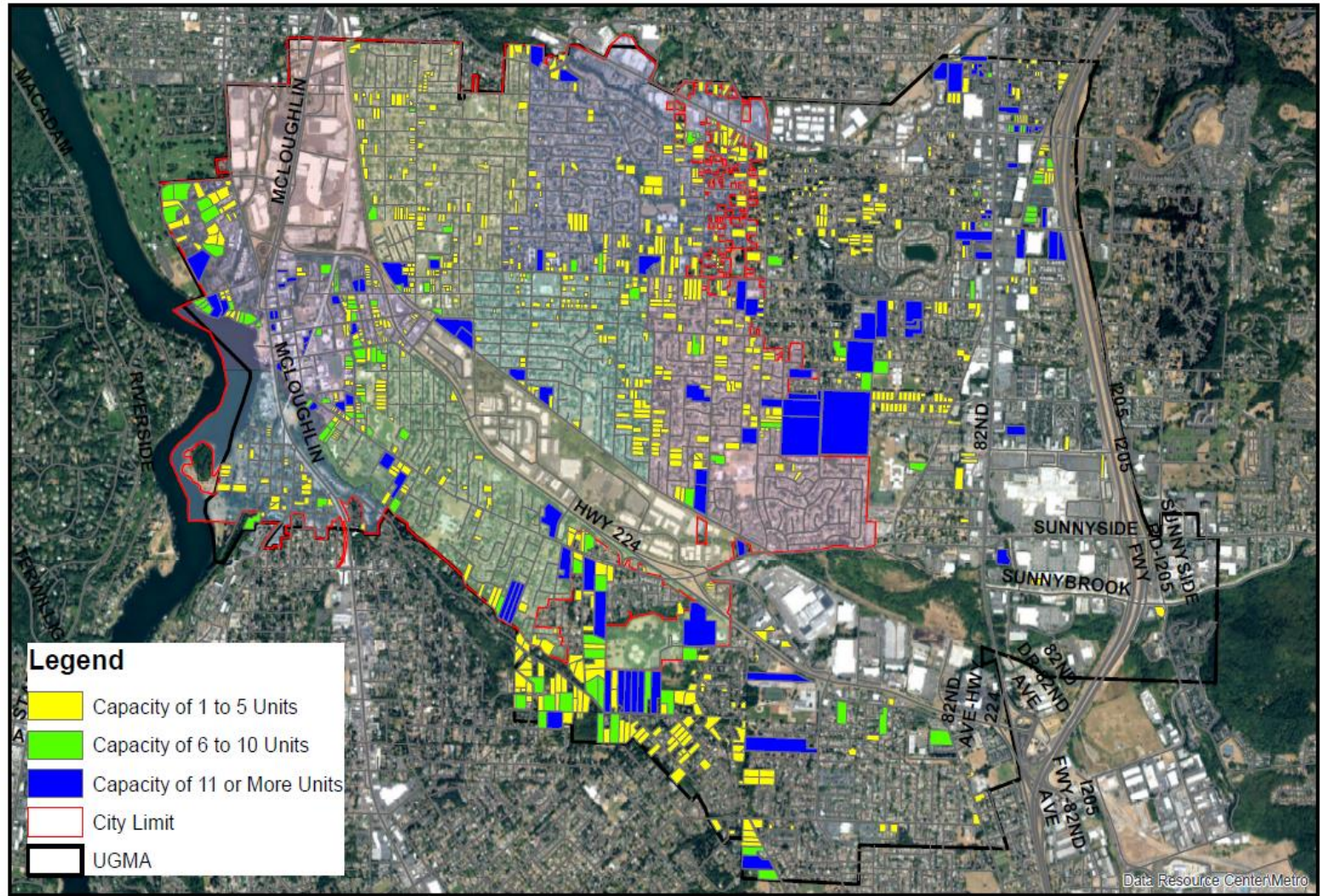
- **Residential Tax Revenue:**
 - 15% to State for homeownership
 - 50% for inclusionary zoning incentives
 - 35% for affordable housing at or below 60% MFI
- **Commercial Tax Revenue:**
 - 100% for affordable housing at or below 60% MFI

Construction Excise Tax Exemptions—Portland Example

- **Required State Exemptions:**
 - Affordable Housing at or Below 80% MFI
 - Public Improvements Under Public Contracting Code
 - Schools, Hospitals, Worship, Agriculture, Non-Profit Care
- **Additional Portland Exemptions:**
 - Affordable For-sale Housing
 - Accessory Dwelling Units for 2 years
 - Improvements when value is less than \$100,000

Milwaukie CET Revenue Estimate





Legend

- Capacity of 1 to 5 Units
- Capacity of 6 to 10 Units
- Capacity of 11 or More Units
- City Limit
- UGMA



Residential Capacity

Milwaukie Planning Dept.
 Data: City of Milwaukie GIS;
 Metro RLIS
 Date: 7/28/2016

1 inch = 2,946 feet

0 550 1,100 2,200 3,300 4,400 Feet



The information depicted on this map is for general reference only. The City of Milwaukie does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

The full text version of this bill and additional information can be found on the Oregon State Legislature Website at:

<https://olis.leg.state.or.us/liz/2016R1/Measures/Overview/SB1533>

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floresa@milwaukieoregon.gov

| Fiscal Year | 05-06 | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 11-12 | 12-13 | 13-14 | 14-15 | 15-16 | |
|-----------------------|-----------------|-----------------|-----------------|----------------|----------------|-----------------|-----------------|----------------|----------------|----------------|-----------------|----------------|
| Commercial Valuation | \$6,961,231.00 | \$34,478,334.00 | \$22,989,872.00 | \$6,634,435.00 | \$3,215,897.00 | \$10,301,304.00 | \$15,678,286.00 | \$6,687,431.00 | \$4,970,123.00 | \$4,420,511.00 | \$15,091,928.00 | |
| Residential Valuation | \$11,830,271.00 | \$5,792,938.00 | \$4,848,331.00 | \$2,884,050.00 | \$1,608,590.00 | \$1,906,075.00 | \$1,156,465.00 | \$2,493,155.00 | \$3,815,294.00 | \$2,460,919.00 | \$4,860,653.00 | |
| Fiscal Year | 05-06 | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 11-12 | 12-13 | 13-14 | 14-15 | 15-16 | |
| Commercial Revenue | \$69,612.31 | \$344,783.34 | \$229,898.72 | \$66,344.35 | \$32,158.97 | \$103,013.04 | \$156,782.86 | \$66,874.31 | \$49,701.23 | \$44,205.11 | \$150,919.28 | \$1,314,293.52 |
| Residential Revenue | \$118,302.71 | \$57,929.38 | \$48,483.31 | \$28,840.50 | \$16,085.90 | \$19,060.75 | \$11,564.65 | \$24,931.55 | \$38,152.94 | \$24,609.19 | \$48,606.53 | \$436,567.41 |
| Total Revenue | | | | | | | | | | | \$1,750,860.93 | |

Valuation does not include any Light Rail projects. LR projects within fiscal years 2011-2012 / 2012-2013

FY Valuation Notes for spike in valuation

| | |
|-----------|---|
| 2005-2006 | North Main Village |
| 2006-2007 | New Safeway and Safeway site |
| 2007-2008 | NCSD various school projects - New Ardenwald school |
| 2008-2009 | |
| 2009-2010 | |
| 2010-2011 | Harmony Storage /Shop, Maitwell Cold Storage Warehouses |
| 2011-2012 | Oak Street Square - Shell, Walgreens and TI build outs |
| 2012-2013 | |
| 2013-2014 | |
| 2014-2015 | |
| 2015-2016 | OLCC Conveyor and re-roofs, Providence Hospital Geriatric Behavioral TI |