

## ORDINANCE NO. NS - 2396

### AN ORDINANCE AMENDING THE BEND MUNICIPAL CODE TO CREATE A NEW CHAPTER 9.45, ESTABLISHING A COMMERCIAL AND INDUSTRIAL CONSTRUCTION TAX

#### Findings:

A. The City of Bend has had an affordable housing fee since 2006. The fee is assessed at 1/3 of one percent of permit valuation on every building permit issued by the City. The revenue from the fee funds the City's Affordable Housing Fund. Through this fund, the City has contributed to the construction of over 600 units of deed-restricted affordable housing in the City. Although the ability of local government to impose construction excise taxes or fees was subsequently eliminated by the Oregon legislature, the City's Affordable Housing fee was considered "grandfathered" and remained in effect.

B. In 2016, the Oregon legislature passed Senate Bill 1533 (SB 1533). The legislation had two primary components: it allowed local governments to implement inclusionary zoning under certain parameters, and it restored the authority of local governments to establish construction taxes.

C. SB 1533 recognized two types of construction taxes: taxes on residential improvements, and taxes on commercial and industrial improvements. The revenue from each type of tax has specific requirements on how it may be allocated and spent. 50% of the revenue from a tax on commercial and industrial improvements must be allocated to programs of the City related to housing. The remaining revenue is unrestricted and may be allocated on a discretionary basis.

D. At its November 12, 2020, and December 2, 2020 meetings, the City Council received presentations focused on funding options for homeless services. A new construction tax authorized by SB 1533 was discussed as a potential option. Council voiced support for housing programs, and identified a need to fund services and programs, potentially including child care, a critical need in Bend, for people making up to 30% of Area Median Income. After considering options, the Council directed staff to return with an ordinance amending the Bend Municipal Code to establish a construction tax on commercial and industrial improvements consistent with this direction. The proposed ordinance would establish a construction tax on commercial and industrial improvements at a rate of 1/3 of one percent of the building permit valuation.

E. The Council desires a process for how revenues from a new tax would be awarded to third parties. The proposed code calls for an RFP or other comparable process for awarding funding to third parties, potentially involving the City's committee structure.

F. In order to ensure adequate time for implementation, the tax established by this

ordinance will be assessed on building permits no sooner than March 1, 2021. The ordinance will be effective in normal course.

G. By adopting this Ordinance, the Council gives direction to City staff to take whatever steps are necessary to implement and administer the new construction tax, including creating one or more new special revenue funds.

**Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. The Bend Municipal Code is amended to create a new Chapter 9.45, Commercial and Industrial Construction Tax, in Title 9, Buildings, as shown on the attached Exhibit A.

First Reading: December 16, 2020

Second reading and adoption by roll call vote: December 29, 2020

YES: Sally Russell, Mayor  
Bruce Abernethy  
Barb Campbell  
Gena Goodman-Campbell  
Chris Piper

NO: Justin Livingston  
Bill Moseley

  
\_\_\_\_\_  
Sally Russell, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary A. Winters, City Attorney

## **Chapter 9.45 COMMERCIAL AND INDUSTRIAL CONSTRUCTION TAX**

Sections:

9.45.010 Commercial and Industrial Construction Tax Imposed

9.45.015 Exemptions

9.45.020 Revenue Allocation and Award

### **9.45.010 Commercial and Industrial Construction Tax Imposed**

No sooner than March 1, 2021, a tax of one third of one percent of permit valuation shall be assessed for all building permits for commercial and industrial improvements that result in a new structure or additional square footage. For purposes of this section, commercial and industrial improvements are all improvements not designed or intended to be used, or actually used, for residential purposes.

### **9.45.015 Exemptions**

A. The tax imposed by Section 9.45.010 will not be imposed on the following:

1. Private school improvements.
2. Public improvements as defined in ORS 279A.010.
3. Residential housing that is 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 the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.
4. Public or private hospital improvements.
5. Improvements to religious facilities primarily used for worship or education associated with worship.
6. Agricultural buildings, as defined in ORS 455.315 (2)(a).
7. Facilities that are 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. A person seeking an exemption may be required to demonstrate that the improvements are eligible for an exemption.

### **9.45.020 Revenue Allocation and Award**

- A. As soon as possible after the end of each fiscal quarter, the revenues from the tax will be deposited in the General Fund.
- B. The revenues from the tax will be transferred to a special revenue fund. Following that transfer, the City may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the City incurred in complying with this section.
- C. After deducting the administrative fee authorized under subsection B. of this section and paying any refunds, the amounts in the special revenue fund will be used as follows:
1. At least 50% of the funds will be used for programs of the City related to housing.
  2. The remaining funds will be used for support, services, and programs for people making up to 30% of Area Median Income.
- D. The City will conduct a Request for Proposals (RFP) or other comparable process prior to awarding funds to third parties. If the City uses its committee structure for the RFP or other comparable process, the involved committee(s) will make recommendations to the City Council on funding awards.