

## ARTICLE 15

### SUPPLEMENTAL BUILDING CONSTRUCTION AND IMPROVEMENT TAX

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## ARTICLE 15

### SUPPLEMENTAL BUILDING CONSTRUCTION AND IMPROVEMENT TAX

(Added by Ordinance No. 90-24 C.S., adopted October 5, 1990)

SEC. 8-15.01 TITLE AND PURPOSE. This article may be cited as the 'Supplemental Building Construction and Improvement Tax (SBCIT).'

The tax imposed under this article is solely for the purpose of raising revenue. This article is not enacted for regulatory purposes.

SEC. 8-15.02 DEFINITIONS. Except where the context otherwise requires, the following definitions shall govern the construction of this article:

- (a) Developer. An individual or entity submitting an application for a building permit or other entitlement for development.
- (b) Gross Square Footage (g.s.f.). All of the floor area confined by the outside surface of the exterior perimeter of a building, except for that floor area devoted solely to vehicular parking and circulation.
- (c) Improvements that Mitigate Project-Specific Impacts. Improvements, including required frontage improvements and improvements to streets and intersections that provide access to a development or circulation within a development and off-site improvements, if a significant proportion of the need for the improvements is created by the development.
- (d) Industrial/Warehouse. A development or portion of a development which is used primarily for industrial uses such as: manufacturing, preparation, compounding, processing, packing, treating, fabricating, or assembling; commercial repair or maintenance; or the warehousing of goods or equipment. Examples include but are not limited to:

- Plant Nursery or Greenhouse
- Boat and Recreational Vehicle Storage Yard
- Research or Development Laboratory
- Storage Garage
- Recycling Center
- Wholesale Business
- Job Printing
- Industrial Park
- Storage of Liquified Petroleum Gas
- Concrete or Asphalt Batching Plant
- Railroad or Trucking Terminal Facilities
- Salvage Yard

- (e) Multifamily Residential. A building or any part thereof which is planned or designed for use for two or more dwelling units on a common lot. Examples include but are not limited to:

Apartments  
Condominiums  
Duplexes

For the purposes of this article mobile home lots shall be classified as 'multifamily residential.'

- (f) New Development. Any construction, addition, enlargement, installation, conversion, or renovation of a structure that requires the issuance of a building permit.

- (g) Office/Services. A development or portion of a development which is used primarily for offices (e.g., administrative, business, finance, or professional office use) or services (e.g., providing personal services, restaurant services, transient lodging, and other services to the public). Specific examples include but are not limited to:

Restaurant  
Hospital (general or convalescent)  
Tavern  
Commercial Recreation Facilities  
Drive-In Theatre  
Service Station  
Hotel  
Motel  
General Office  
Bank  
Blue Printing or Other Copying Service  
Medical Laboratory  
Dental Laboratory  
School  
Clinic  
Cleaning/Laundry  
Studio  
Repair Shop  
Mortuary  
Theatre  
Auto Repair  
Ambulance Service  
Automobile Rental  
Professional Office  
Administrative Office  
Day Care Center  
House of Workship

(Amended by Ordinance No. 92-30, adopted September 22, 1992)

- (h) Retail/Commercial. A development or portion of a development which is used primarily for the retailing of goods. Examples include but are not limited to:
  - Retail Store
  - Automobile Sales Lot or Agency
  - Retail Sales of Building Material, Industrial Equipment, or Machinery
- (i) Single-Family Residential. A detached residential unit or an attached residential unit on an individual lot.
- (j) Tax Administrator. The Director of Public Works of the City of Hayward or such other officer or employee of the City to whom the City Manager assigns the responsibility of administering the provisions of this article.
- (k) Transportation or Traffic Improvements. Physical transportation improvements which add needed capacity to the transportation system or improve the traffic flow or operations of the system or intersection that have a cost of at least \$1,000. Only right-of-way, construction, engineering, and inspection costs shall be considered in determining the cost of such improvements.

SEC. 8-15.03 TAX RATES. The rates of the tax imposed under this article are as follows:

- (a) Single-Family Residential      \$1200 per unit
- (b) Multifamily Residential        \$ 960 per unit
- (c) Retail/Commercial              \$3.96 per g.s.f.
- (d) Office/Service                    \$3.00 per g.s.f.
- (e) Industrial/Warehouse            \$1.44 per g.s.f.

SEC. 8-15.04 TIME OF PAYMENT.

- (a) The amount of tax imposed for the construction of any building, or portion thereof, shall be due and payable at the time a certificate of occupancy is issued or at the time of final inspection should no occupancy permit be required.
- (b) Notwithstanding subsection (a) of this Section, if the residential developer is eligible pursuant to subsection (c) of this Section, the developer may elect to defer the payment of the tax until the earliest of the following to occur:
  - 1. Close of any escrow for the sale of the property on which the building is located, or
  - 2. One year after issuance of the certificate of occupancy (or one year after final inspection should no occupancy permit be required);

Provided that the property owner enters into a contract with the City to pay the tax at the time specified and all associated administrative and other costs, which contract shall be secured by a recorded lien against the property.

- (c) The deferral of payment permitted by subsection (b) may be permitted only for the following:
1. For any residential developer seeking a certificate of occupancy or final inspection until December 31, 2012;
  2. For any residential developer who elects to voluntarily comply with all provisions of Article 22, Chapter 10 of the Hayward Municipal Code, "Green Building Requirements for Private Developers," who is not otherwise required to do so.

SEC. 8-15.05 TAX LIABILITY DETERMINATION AND CALCULATION.

- (a) Each application for a building permit for new development shall include at least the following information. This information shall be included on a form provided by the Tax Administrator and may be required to be amended by the Tax Administrator for greater accuracy.
- (1) The proposed number and type of residential units and gross square footage of building area for each use category listed in Section 8-15.03.
  - (2) The existing number and type of residential units and gross square footage of building area for which a credit is sought under Section 8-15.08.
  - (3) The proposed and existing uses in the development shall be assigned to use categories according to the list in Section 8-15.03.
- (b) If the new development does not fit within any category of use listed in Section 8-15.03, then the Tax Administrator shall calculate the tax based upon the closest classification to the particular use.
- (c) Prior to issuance of a certificate of occupancy, or final inspection where no certificate of occupancy is required, the developer shall either certify that the information provided pursuant to subparagraphs (1) and (2) is true and correct or amend said information to make it correct.

SEC. 8-15.06 PLACE OF PAYMENT. Taxes imposed under this article shall be paid to the Building Official of the City of Hayward at the office of the Building Inspection Division of the City of Hayward.

SEC. 8-15.07 EXEMPTIONS. The tax imposed under this article shall not apply to the following:

- (a) The City of Hayward, the United States or any agency or instrumentality thereof, the State of California or any county, city and county, district or any political subdivision of the State of California, or any other governmental agency.
- (b) Upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the State of California.

- (c) Enlargement, remodeling or alteration of:
  - (1) Single-family residential or multifamily residential where no additional dwelling units or mobile home lots are created;
  - (2) Industrial/Warehouse, Office/Service, or Retail/Commercial uses where less than 500 g.s.f. of development is added.
- (d) Reconstruction of development which was damaged or destroyed by earthquake, fire, flood, or other cause over which the owner had no control (provided that compliance with any building code or other ordinance requirements of the City of Hayward or of any other applicable law shall not be deemed a cause over which the owner has no control), but only if the number of dwelling units, number of mobile home lots, or gross square footage for non-residential uses is not increased. If the number of dwelling units, or mobile home lots, or the gross square footage for non-residential uses is increased, then the tax imposed under this article shall apply to such increase only.
- (e) (Deleted by Ordinance No. 92-30, adopted September 22, 1992)
- (f) (Deleted by Ordinance No. 92-30, adopted September 22, 1992)

SEC. 8-15.08 CREDITS FOR ELIMINATION OF EXISTING DEVELOPMENT.

- (a) New development that, through demolition or conversion, will eliminate existing development meeting the thresholds contained in Section 8-15.07(c) is entitled to a tax credit if the existing development is a lawful use under the regulations of the City, including those defining a lawful non-conforming use.
- (b) Credit for demolished or converted development shall be calculated by the Tax Administrator pursuant to Section 8-15.03 and shall be applied to new development on the same site. An amount of the credit that is greater than the taxes required under this article for a new development may be reserved and credited toward the tax of any subsequent phases of the same development, if determined appropriate by the Tax Administrator. Such reserved credit must be used within five years of its determination by the Tax Administrator. No interest shall accrue to the tax credit over time.

SEC. 8-15.09 IN-LIEU TAX CREDITS FOR CONSTRUCTION OF IMPROVEMENTS.

- (a) Subject to the provisions of subsections (b), (c), and (d), a development shall be entitled to an in-lieu tax credit for the construction of transportation improvements and payment of fees and non-reimbursable assessments for such improvements as follows:
  - (1) Non-reimbursable costs of either construction of transportation improvements or payment of fees for such improvements as a condition of approval for the new development which mitigate all or a portion of the development's share of cumulative traffic impacts or that mitigate general cumulative traffic impacts that exceed those attributable to the new development. There shall not be an in-lieu tax credit for any traffic improvements that mitigate project-specific traffic impacts.

- (2) Non-reimbursable assessments for the site for traffic improvements which mitigate all or a portion of new development's share of cumulative traffic impacts, or that mitigate general cumulative traffic impacts that exceed those attributable to the new development. There shall not be an in-lieu tax credit for any traffic improvements that mitigate project-specific traffic impacts. A credit hereunder is available only as follows:
- (i) The assessment district has been formed and the assessments continue to be levied at the time the tax becomes due; or
  - (ii) An application for an in-lieu tax credit is filed within five (5) years from the date the tax became due for an assessment district which was formed after the tax became due.
- (b) The developer shall submit adequate documentation, using methods acceptable to the Tax Administrator, to support the application for in-lieu tax credit. The Tax Administrator shall determine whether improvements are eligible for in-lieu credit and the amount of such credit. For new assessment districts, credits shall only be available where the costs of qualifying traffic improvements have been specifically identified within the assessment district's formation documents.
- (c) Taxes required under this article shall be reduced by the costs of the in-lieu improvements as demonstrated by the developer and reviewed and approved by the Tax Administrator. If the value of the in-lieu tax credit exceeds the otherwise required taxes, this article does not create an obligation on the City to pay the developer the excess amount.
- (d) An amount of in-lieu tax credit that is greater than the taxes required under this article for a new development may be reserved and credited toward the tax of any subsequent phases of the same development if determined appropriate by the Tax Administrator. Such reserved credit must be used within five years of its determination by the Tax Administrator. No interest shall accrue to the credit over time.

SEC. 8-15.10 ADOPTION OF ADMINISTRATIVE REGULATIONS. The City Manager is authorized to adopt administrative regulations to implement the provisions of this article.

SEC. 8-15.11 PERFORMANCE. Failure of any City official to fulfill the requirements of this article shall not excuse payment of the tax required hereunder.

SEC. 8-15.12 SUSPENSION OF TAX. The tax imposed by this article shall be suspended during any time period for which the City has in operation a subsequently adopted fee whereby new development is charged for all or a portion of its individual incremental share of traffic improvements needed to accommodate the cumulative traffic impacts caused by new development. However, in the event such fee ordinance is held invalid, or is repealed or suspended, the taxes imposed by this article shall be automatically reimposed as a matter of law, and no break in the imposition of such tax shall be deemed to have occurred.

SEC. 8-15.13 TERMINATION OF TAX. The tax imposed under this article shall terminate on September 30, 1995, if the tax is not earlier suspended by the operation of a fee as described in Section 8-15.12 of the Hayward Municipal Code, or unless extended by resolution of the City Council. (Amended by Ord. 92-30, adopted September 22, 1992, Ord. 93-27, adopted November 23, 1993, and Ord. 94-16, adopted July 26, 1994) On July 25, 1995, the City Council extended this tax indefinitely by adopting Resolution 95-150 (see attached).

On June 30, 1998, the City Council adopted Resolution 98-121 confirming the results of Measure F which validated the SBCIT pursuant to the provisions of Proposition 218 (California Constitution, Article XIII C, Section 2 (e)), and approved the continued collection of the tax.