

**Washington County Transportation Development Tax Code\***  
Exhibit 'A' to A-Engrossed Ordinance 691  
as Modified by Ordinances 729, 741, 746-A, 751 and 793-A  
Effective October 1, 2014

Chapter 3.17 Transportation Development Tax

**3.17.010 Short Title.**

This chapter shall be known, and may be pleaded as, the Washington County transportation development tax ordinance.

**3.17.020 Purpose and Scope.**

- A. This tax is adopted to ensure that new development contributes to extra capacity transportation improvements needed to accommodate additional vehicle traffic and demand for transit facilities generated by such development.
- B. This tax shall provide funds for extra capacity improvements to county and city arterials, certain collectors, certain state facilities, and transit facilities, as listed in the Capital Improvements Project List, attached hereto as Appendix C. The tax applies throughout the county, including within incorporated cities.
- C. This ordinance is intended to adopt a countywide tax that complies with the provisions of ORS 223.297-223-314. Any reference to SDCs or System Development Charges in this ordinance, its exhibits or appendices, shall be deemed to refer to both the TDT, and to the equivalent provision under the above-cited statutes, unless the context requires otherwise.

**3.17.030 Definitions.**

As used in this chapter unless the context requires otherwise:

- A. "Applicant" means the person seeking to obtain a building permit.
- B. "Application" means an application for a building permit.
- C. "Arterial" means a roadway or street that has the functional classification of "arterial" in a city or county comprehensive plan or transportation plan.
- D. "Board" means the Board of County Commissioners of Washington County, Oregon.
- E. "Building official" means that person, or his designee, licensed by the state and designated as such to administer the State Structural Specialty Code for the county or city.
- F. "Building permit" means that permit issued by the county or city building official pursuant to the International Building Code. In addition, "building permit" means the mobile home placement permit issued by the Director, or his representative, on a form approved by the Department of Commerce of the state and relating to the placement of mobile homes in the county. For those uses for which no building permit is provided, the final approval granted by

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the jurisdiction approving the use shall be deemed a building permit for purposes of this chapter.

- G. "City" means each incorporated city within the boundaries of the county.
- H. "City Council" means the governing body of each incorporated city having jurisdiction over property within the boundaries of the county.
- I. "Collector" means a roadway or street that has the functional classification of "collector" in a city or county comprehensive plan or transportation plan.
- J. "Comprehensive plan" means the comprehensive plan, transportation plan, capital improvements plan, public facilities plan or equivalent plan adopted by ordinance by the applicable jurisdiction.
- K. "Condition of Development Approval" means any requirement imposed on an applicant by a county or city land use or limited land use decision, or site plan approval.
- L. "Construction cost index" means the adjustment to the TDT calculated as set forth in section 3.17.050F and Appendix D.
- M. "Contiguous" means that a property and an improvement or portion thereof share a common boundary line. Determination of what is contiguous shall include the area of all property subject to the development approval. The boundary lines and area of an improvement shall be determined by the right of way and easement areas for the improvement. In addition, multiple properties under common ownership separated by one or more of the following: common area, non-motorized vehicle or pedestrian way, creek, wetland, park, or similar areas; shall be deemed to include the boundary of such additional area in their boundary line, up to 100 feet between the properties at the boundary with the improvement. Any portion of an improvement that is located beyond the frontage of a property, as determined by the extension of boundary lines perpendicular to the frontage of the property, shall not be contiguous to that property. An intersection improvement shall be deemed contiguous to all property with frontage on the intersection, or that touches the intersection at a point.
- N. "County" means Washington County, Oregon.
- O. "Credit" means the amount by which an applicant may be able to reduce the TDT as provided in this Ordinance.
- P. "Department" means the County Department of Land Use and Transportation, or, in those cities that have opted to collect and administer this tax, the department charged with those duties.
- Q. "Development" means any man-made change to improved or unimproved real estate, including a building or other land construction, or making a physical change in the use of a structure or land, in a manner that increases the usage of transportation capital improvements or which may contribute to the need for additional or enlarged transportation capital facilities as determined in this chapter. "Development" includes "New Development".

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- R. "Director" means the director of the Department of Land Use and Transportation, or in those cities that have opted to collect and administer this tax, the person designated by the city to so act.
- S. "Extra capacity facilities or improvements" means those transit, arterial and collector improvements that are necessary in the interest of public health, safety and welfare to increase traffic capacity to address new development. Such improvements include, but are not limited to, signalization, channelization, widening, drainage work, pedestrian safety, lighting, acquisition of right-of-way and necessary easements, street extensions, railroad crossing protective devices, bridges and bike paths, and transit.
- T. "Improvement Fee" means an SDC for costs associated with capital improvements to be constructed after the effective date of this Ordinance.
- U. "ITE Trip Generation Manual" means that publication entitled "Trip Generation, 7<sup>th</sup> Edition" (2001) published by the Institute of Transportation Engineers.
- V. "Minimum Standard Facility" for roads means facilities to meet the adopted standards for a local public street or road applicable in the location of the subject development. For transit, "minimum standard facility" means the capital facilities necessary to provide standard transit service.
- W. "New Development" means development for which a Building permit is required, and which occurs on or after the effective date of this Ordinance.
- X. "Occupancy permit" means the occupancy permit provided for in the International Building Code or other ordinance of the applicable jurisdiction. If no occupancy permit is provided for a particular use, the final inspection and approval shall serve as the occupancy permit.
- Y. "Over-capacity" means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the applicant's new development or mitigate for transportation system impacts attributable to the applicant's new development.
- Z. "Permit" means a Building Permit.
- AA. "Previous use" means the most intensive lawful, permitted use existing at a particular property on or after January 1, 2005, but not more than ten years prior to the date of application for a building permit. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this Chapter, all of the specific use categories shall be considered. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property.
- AB. "Proposed use," means the use proposed by the applicant for the new development. Where the applicant proposes several different uses (mixed use) for the new development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property.

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- AC. "Qualified Public Improvement" means any transportation system capital facility or conveyance of an interest in real property that increases the capacity of the county or city transportation system, and is:
1. Required as a condition of development approval;
  2. Identified in the Washington County Transportation TDT Capital Improvement Projects List; and
  3. (a) Not located on or contiguous to property that is the subject of development approval, or (b) located on or contiguous to property that is the subject of development approval and, in the opinion of the Director, is required to be built larger or with greater capacity (overcapacity) than is necessary for the applicant's new development or to mitigate for transportation system impacts attributable to the applicant's new development.
- AD. "Reimbursement charge" means an SDC for costs associated with capital facilities that have already been constructed which have been determined to have capacity available to serve new development.
- AE. "Road" means a county road, city street, or state highway.
- AF. "Transportation Development Tax Capital Improvement Projects List" or "Project List" means the program set forth in the Appendix C attached hereto that identifies facility improvements projected to be funded with transportation TDT revenues, and includes the estimated cost, timing, and percentage of costs eligible for funding from TDT revenues for each project.
- AG. "TDT Methodology Report" means the report entitled "Washington County Transportation System Development Tax Methodology Report", dated August 2008, attached hereto as Appendix A.
- AH. "Temporary construction facility" means those facilities needed on an interim basis for construction of specific uses, structures or road improvements, and which are intended to be discontinued when construction is complete. Such facilities include, but are not limited to, accessory construction structures, staging areas, parking, and park-and-ride lots in conjunction with construction of a facility.
- AI. "Temporary use" means a use or structure on improved or unimproved real estate which is of impermanent nature, and is used for less than ninety days in a calendar year.
- AJ. "Transportation Development Tax" or "TDT" means a reimbursement charge, an improvement charge or a combination thereof assessed or collected at the time of increased usage of transportation capital facilities or issuance of a development permit or building permit. "TDT" also means the tax imposed under this chapter.

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**3.17.040 Imposition and Exceptions.**

- A. A transportation development tax is imposed on all development in the county, including inside cities, as provided for herein. The amount of the tax shall be calculated according to section 3.17.050.
1. Except as otherwise provided in this Chapter, a TDT shall be imposed upon all Development for which an Application is filed, or was required to be filed, after the effective date of this ordinance, and for which a building permit is issued.
  2. The Applicant shall at the time of Application provide the information requested on a TDT application form regarding the proposed use(s) and the previous use (if any), of the property, including the following:
    - a. A description of each of the previous and proposed uses for the property for which the Permit is being sought with sufficient detail to allow calculation of trip generation for the entire property under the previous use and for the proposed use(s) of the Development.
    - b. For residential uses, the number of residential dwellings, including type (i.e., single family, multi-family, manufactured housing, etc.).
    - c. For non-residential uses, the number of units (i.e., number of square feet, students, movie screens, vehicle fueling positions, beds, etc.) for the land use as listed in Appendix B (i.e., office, shopping center, etc.) included in the Development.
- B. The uses listed and described in this subsection are exempt, either partially or fully, from payment of the TDT. Any Applicant seeking an exemption under this Section shall request that exemption, in writing, no later than the time of application for the Building Permit. Where Development consists of only part of one or more of the uses described in this Section, only that/those portion(s) of the Development that qualify under this Section are eligible for an exemption. The balance of the Development that does not qualify for any exemption under this Section shall be subject to the full TDT.
1. Remodeling or replacement of existing structures (including mobile homes) except to the extent that the remodeling or replacement creates demands on the transportation system greater than those of the existing use of the property;
  2. Temporary uses which do not exceed ninety days in a calendar year;
  3. Temporary construction facilities as determined by the Director;
  4. A transit improvement which has the impact of removing vehicle trips or reducing vehicle miles of travel on the county's major roadway system, as approved by the Director;
  5. Construction, remodeling or expansion of federal or state facilities and uses otherwise exempt from taxation by counties;

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6. Relocation due to government acquisition of the entire previous use as part of a project listed in Appendix C, to the extent the use at the new site does not exceed the size or impact of the previous use. Any additional size or impact shall be subject to the tax.

**3.17.050 Amount.**

- A. Except as otherwise provided in this Chapter, the amount of the TDT due shall be calculated by: 1) determining the category of the proposed use from the list in Appendix B; 2) determining the TDT rate per unit for that use in Appendix B; and 3) determining the number of units for the proposed use. The TDT rate per unit, multiplied by the number of units for the use, shall be the TDT charge.
- B. For new development for which a previous use existed on the property, the amount of the TDT due shall be determined by calculating the TDT of the previous use(s) on the property and subtracting that sum from the TDT for all of the proposed use(s) as provided in Paragraph A above. Except as provided for in subsection C of this section, the proposed use and the previous use shall be determined based on the rates listed in Appendix B.
- C. In the event the Director determines that a particular use does not have a basis for TDT calculation stated in Appendix B the Director shall either:
  1. Determine the TDT based on the use listed in Appendix B most similar in trip generation; or
  2. At the election (and expense) of the applicant, consider an alternate TDT based on a traffic study to estimate the weekday average person trip generation of a same or similar use verified by a registered traffic engineer. In the event an alternate TDT is utilized, the Director may make such adjustments as deemed applicable in consideration of location, size and other appropriate factors.
    - a. The applicant's traffic study methodology must be consistent with Appendix A and follow standard professional traffic engineering practice.
    - b. The applicant's study must provide complete and detailed documentation, including verifiable data. Supporting documentation must rely upon generally accepted sampling methods, sources of information, demographics, growth projections, and techniques of analysis.
    - c. The TDT shall be determined according to the methodology set forth in Appendix A, applied to the trip generation determined by the traffic study.
  3. If all of the above criteria are not met, the Director shall provide the Applicant a written decision explaining the basis for rejecting the proposed study, and shall determine the TDT according to subsection C.1 above.
- D. It is recognized that single structures may include more than one use. In such event the Director for purposes of establishing the TDT shall proportion the uses accordingly.
- E. The tax rates per unit for each land use set forth in Appendix B to this Ordinance shall on July 1 of each succeeding year be adjusted automatically based on a five-year moving

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average of the TDT index described in Appendix D. A final product ending in \$0.49 or less shall be rounded down to the nearest dollar, \$0.50 or more up to the next dollar. The TDT index shall be calculated based on a combination of the following indices:

1. The National Highway Construction Cost Index reflecting the cost of materials (weighted 50%),
2. The U.S. Bureau of Labor Statistics Employment Cost Index for Private Industry Workers, by Occupational Group and Industry, Construction Group reflecting the cost of labor (weighted 30%), and;
3. The average annual change in total real market value of Washington County real property as estimated from data published by the Washington County Department of Assessment and Taxation reflecting the cost of right-of-way (weighted 20%).

In the event the above index factors use a different base year (i.e., calendar year or fiscal year), the most recent year with complete data shall be used. In the event any of the index factors set forth in this section and Appendix D are no longer available, the Board may by Resolution and Order adopt a replacement index factor that meets the requirements of ORS 223.304(8) for the same type of cost information.

- F. Beginning April 1, 2013, and not later than April 1 of each succeeding year, the Director shall calculate the index adjustment as provided in the section for the preceding five-year period. In the event the TDT rates in Ordinance 691-A Engrossed, as adjusted by this index calculation, are greater than the TDT rates set forth in Appendix A to his Ordinance, then the lower set of TDT rates shall apply as provided in subsection H below. In the event the TDT rates in Ordinance 691-A Engrossed, as adjusted by this index calculation, are less than the TDT rates set forth in Appendix A to his Ordinance, then the lower set of TDT rates shall apply as provided in subsection H below. This subsection G shall apply only for the duration of the revised rate phase-in.
- G. The Board of Commissioners of the County shall implement the adjustment annually by resolution and order adopted by May 1 of each year, to take effect on July 1 of that year, including a revised rate table showing adjusted rates for all land uses. In no event shall there be an increase of over ten percent (10%) per year.
- H. Washington County shall promptly notify each city in writing of the increase or decrease. The adjustment to the dollar amount as described above shall apply to all building permit applications accepted for review on or after July 1, by the county or city having jurisdiction over the development.

### **3.17.060 Payment.**

- A. Unless deferred, the tax imposed is due and payable at the time of issuance of a building permit by the county or city. Except as otherwise provided in this chapter, no building permit shall be issued for a development subject to this tax unless the tax is first paid in full.
- B. Notwithstanding subsection A of this section, in those cases where the amount due exceeds the amount of TDT on a single family detached residence (ITE Code 210), the applicant may request a payment deferral. The request must be made in writing to the Director no later

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than the time of application for a building permit. The Director shall grant deferral of the transportation development tax, however, any deferred charge shall be paid in full prior to the issuance of an occupancy permit. The amount of TDT due on deferred obligations shall be the amount in effect at the time of issuance of the building permit. Deferred TDT obligations shall not be eligible for internal financing or bancrofting as provided in subsection C unless so requested at the time of application for deferral.

- C. Any TDT may be eligible for internal financing or a bancrofting agreement pursuant to ORS 223.205 through 223.785, the Bancroft Bonding Act or any adopted city process. Any installment or bancroft agreement provided by this section shall have an interest rate as determined, at the time of the application, by the chief county or city financial officer and in recognition of the then current market rates and costs associated with the administration of such agreements. Applications for an agreement, as provided in this chapter, must be made at the time of building permit application, or occupancy permit if permitted pursuant to subsection B of this section. No applications made subsequent to issuance of the building permit, or occupancy permit if allowed by subsection B of this section, shall be considered. Any TDT using a financing agreement may be filed as a lien pursuant to ORS 223.230 or applicable city provision.
- D. Any application to defer TDT to occupancy, or for a Bancroft or similar financing agreement allowed in this section, shall be signed by the owner of the subject real property, in addition to the application. The Director may prescribe a form of application for deferral, and a form for any notice required by this subsection. The application for deferral to occupancy shall require the following conditions for approving deferral:
  - 1. Agreement by the applicant and owner to provide written notice to any prospective purchaser or tenant that TDT has not been paid but is deferred to occupancy;
  - 2. A statement from the applicant and owner of the proposed use of the property. This proposed use information shall not be binding on the application, owner, the County or City in assessing the TDT.

### **3.17.070 Credit.**

An applicant for a building permit, or occupancy permit if deferral has been granted, shall be entitled to a credit against the tax for constructing eligible capital improvements as defined in this section. Credit eligibility shall be determined by the Director.

- A. A transportation capital improvement constructed on a public road or transit facility, and accepted by the jurisdiction operating the facility, is eligible for credit provided it meets all the following criteria, and the requirements of either 3.17.070(B) or (C):
  - 1. The Director determines that the timing, location, design and scope of the improvement is consistent with and furthers the objectives of the capital improvement program of the jurisdiction issuing the credit.
  - 2. The improvement is required to fulfill a condition of development approval issued by the jurisdiction with land use decision making authority.

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3. The improvement must provide additional capacity to meet future transportation needs, or be constructed to address an existing safety hazard. Improvements to mitigate a safety hazard created primarily by the development are not eligible.
  4. Improvements which primarily function as access to a private street, driveway or development parcel are not eligible.
  5. The applicant shall have the burden of demonstrating in its application for credit that a particular improvement qualifies for credit.
  6. Improvements, including travel lanes and bike lanes, must be at ultimate alignment, line and grade.
  7. New roads are eligible projects as long as they meet the remaining project eligibility criteria. An existing dirt or gravel road is deemed new if its daily traffic volume is below two hundred vehicles per day.
  8. Bike lanes are eligible if required pursuant to applicable street or road standards.
  9. No credit shall be granted for utility relocation except for that portion which otherwise would have been the legal obligation of the jurisdiction pursuant to a franchise, easement or similar relationship.
  10. No credit shall be granted for minor realignments not designated on the comprehensive plan.
  11. No more than 13.5 percent of the total eligible construction cost shall be creditable for survey, engineering, and inspection.
  12. No credits shall be granted for storm sewer improvements that are also eligible for stormwater SDC credits.
- B. The Director shall provide credit for the documented, reasonable cost of construction of all or part of a qualified public improvement listed in Appendix C, based on the following criteria:
1. Transportation improvements located neither on nor contiguous to the property that is the subject of development approval shall be eligible for full credit.
  2. Transportation improvements located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be eligible. Credit for these improvements may be granted only for the cost of that portion of the improvement that a) exceeds the local government's minimum standard facility size; or b) exceeds the capacity needed to serve the particular development project or property.
  3. Road right-of-way required to be dedicated pursuant to the applicable comprehensive plan or development conditions is eligible as follows:

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- a. To the extent an improvement is located neither on nor contiguous to the property that is the subject of development approval, the reasonable market value of land purchased by the applicant from a third party and necessary to complete that improvement is creditable.
  - b. Road right-of-way located on or contiguous to the property that is the subject of development approval shall be eligible for credit to the extent necessary to construct the facility in excess of the local government's minimum standard facility needed to serve the particular development project or property. Credit for such right of way shall be allowed based on market value as determined by the county tax records.
- C. The Director shall provide credit for a transportation capital improvement to a facility that is not a qualified public improvement. Such improvements shall be eligible for credit for a portion of the cost of the improvement as follows:
1. The improvement was made to a roadway designated as an arterial or collector in the adopted transportation plan of the county or city issuing the credit.
  2. Transportation improvements located neither on nor contiguous to the property that is the subject of development approval shall be eligible for 75% credit for arterials, and 50% for collectors.
  3. Transportation improvements located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be eligible for 75% credit for arterials, and 50% for collectors. Such credit may be granted only for the cost of that portion of the improvement that exceeds the local government's minimum standard facility size or capacity needed to serve the particular development project or property.
  4. The county or city governing body may adopt a list of "high priority collectors" within its jurisdiction. Upon adoption of such a list, improvements to the designated high priority collectors shall be eligible for a total credit of 75% of the costs otherwise allowed under this subsection. Placement of a collector on a high priority list is for credit purposes only, does not amend the Project List, and does not authorize expenditure of TDT funds for that facility.
  5. Road right-of-way required to be dedicated pursuant to the applicable comprehensive plan or development conditions is not creditable. The reasonable market value of land purchased by the applicant from a third party and necessary to complete an improvement under section 3.17.070C2 is creditable. Credit for right of way acquired from a third party shall be for the portion of the improvement for which credit is allowed, and for the percent of costs eligible for credit.

### **3.17.080 Credit Application and Administration.**

- A. All requests for credit vouchers must be in writing and filed with the Director not more than ninety days after acceptance of the improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the applicable jurisdiction. The amount of any credit shall be determined by the Director and based upon the subject improvement contract documents, and other appropriate information, provided by the

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applicant for the credit. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements of this section. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Director's opinion, the improvement(s) meets the requirements of this section and the Director concurs with the proposed value of the improvement(s), a TDT Credit shall be granted for the eligible amount. The value of the TDT Credits under this Section shall be determined by the Director based on the actual cost of construction and right of way, as applicable, as verified by receipts and other credible evidence submitted by the Applicant. Upon a finding by the Director that the contract amounts, including payments for right of way, exceed prevailing market rates for a similar project, the credit shall be based upon market rates.

- B. The Director shall respond to the Applicant's request in writing within 30 days of receipt of a technically complete request. The Director shall provide a written explanation of the decision on the TDT Credit request.
- C. Upon approval, the Director shall provide the applicant with a credit voucher, on a form provided by the department. The original of the credit voucher shall be retained by the department. The credit voucher shall state a dollar amount that may be applied against any TDT imposed against the subject property. In no event shall a subject property be entitled to redeem credit vouchers in excess of the TDT imposed. Credits are limited to the amount of the charge attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.
- D. A credit shall have no cash or monetary value. A credit shall only apply against the TDT and its only value is to be used to reduce the TDT otherwise due, subject to all conditions, limitations, and requirements of this chapter.
- E. When issued by the Director, a credit shall be the personal property of the applicant. Credits shall remain the personal property of the applicant unless transferred by the applicant or its authorized agent as transferor. Any person claiming the right to redeem a credit shall have the burden of demonstrating that any credit issued to another person has been transferred to him or her.
- F. Credits shall be apportioned against the property that was subject to the requirement to construct an improvement eligible for credit. Unless otherwise requested by the applicant, apportionment against lots or parcels constituting the property shall be proportional to anticipated average weekday trips generated by the respective lots or parcels. Upon written application to the Director, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. In the case of multi-phase development, excess credit generated in one phase may be applied to reduce the TDT in subsequent phases of the original development project. Reapportionment shall be noted on the original credit voucher retained by the department.
- G. Credits may be reassigned from a property to another property if all the following conditions are met.
  - 1. A request for reassignment of a credit voucher must be made in writing to the Director signed by the person who owns the credit. The request for reassignment of a credit

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voucher shall contain all the information necessary to establish that such a reassignment is allowable under this subsection. The burden of proof that a reassignment is allowable is on the applicant. The Director shall respond in writing to the applicant's request for reassignment within 30 days of receipt of the request.

2. A credit voucher may not be reassigned to a property within any jurisdiction other than the jurisdiction issuing the initial credit unless the transfer is authorized by both the issuing Director and the Director receiving the credit. The transfer may be reassigned only upon a finding by both directors that development of the property using the credit would have similar specific transportation impacts to the same transportation facility or local area as the property development that generated the credit.
  3. Credits may be reassigned within a single jurisdiction if the Director determines that either:
    - a. the lot or parcel that is to receive the credit is adjacent to and served by the transportation improvements that generated the credits, or
    - b. the development on property receiving the credit would have impacts and traffic patterns affecting substantially the same facilities as the property that generated the credit.
  4. When a credit voucher or portion of a credit voucher is reassigned a notation shall be placed on the initial credit voucher that a reassignment has been made. The amount reassigned shall be deducted from the credit voucher.
  5. When a reassignment occurs a new credit voucher shall be issued for the reassigned credit amount.
    - a. The new credit voucher shall note the property to which the initial credit was assigned, subsequent reassignments shall also note the property to which the initial credit was assigned.
    - b. The new credit voucher shall note the credit voucher number from which it was reassigned, if multiple reassignments occur each credit voucher number shall be noted.
    - c. The new credit voucher shall have the same expiration date as the initial credit voucher.
    - d. Apportionment against lots or parcels constituting the property to which a reassignment has been made is allowed as described in subsection F of this section.
  6. A reassigned credit voucher shall follow all rules regarding redemption of credits.
  7. The County or City may charge a fee for administering the reassignment of credits.
- H. Any credit must be redeemed not later than the issuance of the building permit or, if deferral was permitted pursuant to Section 3.17.060, issuance of the occupancy permit. The

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applicant is responsible for presentation of any credit prior to issuance of the building or occupancy permit. Except as provided in Section 3.17.110, under no circumstances shall any credit redemption be considered after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit.

- I. Credit vouchers shall expire on the date ten years after the acceptance of the applicable improvement by the appropriate jurisdiction. No extension of this deadline shall be granted.
- J. Upon annexation, credits previously issued by the county shall be honored by the jurisdiction collecting the tax provided they are redeemed timely.
- K. TIF credits shall be valid to satisfy TDT obligations, subject to the original credit expiration date.

**3.17.090 Dedicated fund.**

The county and each city shall create a dedicated fund entitled "transportation development tax fund," herein "fund." All moneys derived from this tax shall be placed in the fund. TDT revenue, including interest on the fund, shall be used for no purpose other than those activities described as, or for the benefit of, extra capacity facilities as defined herein.

**3.17.100 Use of TDT Revenues.**

- A. Any capital improvement being funded wholly or in part with revenues from this Transportation Development Tax shall be included in the TDT Capital Improvement Projects List, adopted as Appendix C to this Ordinance, and shall include, for each project, the estimated cost, timing and percentage of costs eligible to be funded with revenues from the TDT. The TDT Capital Improvement Projects List may be modified at any time by resolution and order of the Board of County Commissioners.
- B. TDT revenues may be used for purposes that include, but are not limited to, the following, for any project on the Projects List:
  - 1. design and construction plan preparation;
  - 2. permitting;
  - 3. land and materials acquisition, including any costs of acquisition or condemnation;
  - 4. construction of transportation capital improvements;
  - 5. design and construction of new streets, transit facilities, sanitary sewers, drainage facilities, or other public improvements required by the construction of transportation capital improvements;
  - 6. relocating utilities required by the construction of improvements, for which the city or county is legally obligated to pay under easement, franchise or law;
  - 7. landscaping required or designed as part of the project;
  - 8. construction management and inspection;

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9. surveying, soils and material testing;
  10. acquisition of capital equipment that is an intrinsic part of a facility;
  11. demolition that is part of the construction of any of the improvements on this list;
  12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the county to provide money to construct or acquire transportation facilities.
- C. TDT revenue may be spent for direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement project list, and the costs of collecting and accounting for system development charges expenditures.
- D. Money on deposit in the TDT fund shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
  2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- E. TDT revenues shall be spent on improvements within the boundaries of the jurisdiction in which the tax was collected, and for improvements outside the boundaries but which directly benefit the jurisdiction. In those cities which have not opted to administer this tax, taxes collected by the county associated with building permits issued by the cities shall be spent only on projects on the Project List within or directly benefiting the city until such time as the county certifies that all extra capacity needs on such projects have been assured. Upon certification, the county may spend the funds on any project on the Project List.

### **3.17.110 Refunds.**

Refunds of the TDT may be made upon initiation of the Director or upon written application filed with the Director. Refunds shall be allowed upon a finding by the Director that there was clerical error in the calculation of the TDT. Refunds shall be allowed for failure to redeem a credit voucher or offset provided the claim for refund is in writing and actually received by the appropriate jurisdiction within thirty days of the date of issuance of the building permit or occupancy permit if deferral was granted. No refund shall be granted for any reason other than those expressly provided for herein.

### **3.17.120 Administration.**

- A. Except as provided in subsection B below, proof of payment of the TDT to the county or city shall be required prior to issuance of a building permit or occupancy permit if deferred, for any development in the county, including any incorporated city.
- B. Each city shall be entitled to collect the tax and administer this chapter within its city limits provided it files with the Board of County Commissioners a resolution or ordinance approved by the city council and containing the following:

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1. Agreement to administer the tax in full compliance with its terms;
  2. Acceptance of full and sole responsibility for proper administration in accordance with this chapter, including for any fund deficiencies notwithstanding termination;
  3. A provision for ninety days' written notice of termination by city and an agreement to transition administration to the county in a reasonable and good faith manner;
  4. Adoption of an intergovernmental agreement including the above terms, and such other terms to which the parties mutually agree.
- C. Upon filing the ordinance or resolution, and execution of the intergovernmental agreement, the city shall be entitled to retain one hundred percent of all tax revenues it collects to be used pursuant to this chapter.

**3.17.130 Collection.**

- A. Notwithstanding issuance of a building or occupancy permit without payment, the TDT tax liability shall survive and be a personal obligation of the permittee.
- B. Intentional failure to pay the tax within sixty days of the due date shall result in a penalty equal to fifty percent of the tax. Interest shall accrue from the sixty-day point at the legal rate established by statute.
- C. In addition to an action at law and any statutory rights, the jurisdiction due the tax may:
1. Refuse to issue any permits of any kind to the delinquent party for any development;
  2. Refuse to honor any credits held by the delinquent party for any development;
  3. Condition any development approval of the delinquent party on payment in full, including penalties and interest;
  4. Revoke any previous deferrals issued to the delinquent party, in which case the amount immediately shall be due, and refuse to issue any new deferrals;
  5. Withdraw the amount due, including penalties and interest, from any offset account held by the jurisdiction for the delinquent party.
- D. For purposes of this section, delinquent party shall include any person controlling a delinquent corporate permittee, including but not limited to any partnership, limited liability company or joint venture and, conversely, any corporation or entity controlled by a delinquent individual permittee.
- E. The Director is authorized to take the following actions with respect to TDT taxes, penalties, and interest:
1. To take any action described in this section to collect and enforce the tax, penalties, and interest.

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2. To initiate legal action or exercise any other statutory right to collect any delinquent tax, penalties and interest under this chapter upon approval of the Board of Commissioners or City Council, as applicable, or in accordance with any general county of city collection policy.
3. If the Director and the county or city attorney for the entity administering the tax, determine that the delinquent taxes for any development are for any reason wholly uncollectible, the director and attorney may request, in writing, of the governing body for an order directing that the taxes be cancelled. The governing body, when so requested, may in its discretion order and direct the Director to cancel such uncollectible TDT taxes. The order shall be entered in the records of the county or city, as applicable.

**3.17.140 Annual review.**

- A. The county and each city administering the tax shall provide an annual accounting and review of the transportation development tax. This annual report shall be completed by January 1 of each year, and account for the previous fiscal year. The annual accounting shall include:
  1. A list of the amount spent on each project funded, in whole or in part, with TDT revenues;
  2. The amount of revenue collected from jurisdictions TDT;
  3. The costs of complying with the System Development Charge provisions (ORS 223.297 to 223.314, as described in ORS 223.307) and/or other administrative expenses; and
  4. The annual accounting for fiscal years 2009 and beyond shall also include the amount of Traffic Impact Fee revenue collected, and Traffic Impact Fee revenue spent. Traffic Impact Fee funds shall be accounted for separately from the Transportation Development Tax funds.
- B. Each city administering the TDT shall deliver a copy of its annual accounting report to the county, and the county shall prepare a summary report including city and county information.
- C. This review shall consider whether additional tax revenues should be generated to provide extra capacity improvements needed to address new development and ensure that revenues due not exceed identified demands. In so doing, the county shall consider:
  1. Construction of facilities by federal, state or other revenue sources;
  2. Receipt of unanticipated funds from other sources for construction of facilities;
  3. New information provided by the Institute of Transportation Engineers adjusting trip rates; and
  4. The impact of credits.

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- D. Upon completion of this review the county shall consider such amendments, including adjustment to the tax imposed herein, as are necessary to address changing conditions.

**3.17.150 Review of Decisions; Appeals.**

A. Review of Expenditures.

1. Any citizen or other interested person may challenge an expenditure of TDT revenues as being in violation of this chapter provided a written petition for review is filed with the Board of Commissioners of the County within two years of the expenditure. The petition shall identify with reasonable certainty the expenditure, the relevant facts and the specific provision alleged to have been violated.
2. The Board shall order an investigation and direct that within sixty days of receipt of the petition a written report be filed recommending appropriate action. Within thirty days of receipt of the report, the Board shall conduct a hearing to determine whether the expenditure was proper. At least ten days notice of the hearing, including a copy of the report, shall be mailed to the petitioner. Petitioner shall have a reasonable opportunity to present his or her position at the hearing.
3. The Board may adopt rules of procedure governing the hearing including that the hearing may be continued if necessary to further address the issues.
4. The petitioner shall have the burden of proof. Evidence and argument shall be limited to grounds specified in the petition. The Board shall issue a written decision stating the basis for its conclusion and directing appropriate action be taken.
5. Review of the Board decision shall be as provided in ORS 34.010 to 34.100.
6. For purposes of this section, "city council" shall be substituted for "Board of Commissioners" if the petition arises from expenditures made by a city which opted to collect and administer this tax as provided in Section 3.17.120.

B. Review of decisions of the Director:

1. Discretionary decisions of the Director shall be in writing and mailed by regular mail to the last known address of the applicant.
2. Any person aggrieved by a discretionary decision of the Director may appeal the decision to the county hearings officer. The appeal shall be in writing and must be filed with the Director within fourteen days of the date the Director's decision was mailed.
3. The appeal shall state the relevant facts, applicable ordinance provisions and relief sought. The appeal shall be heard by the county hearings officer in the same manner as provided for development permit applications. The county may by resolution establish a reasonable appeal fee.
4. The appellant shall have the burden of proving that an error was committed resulting in substantial prejudice.

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5. In an appeal of a decision to deny a credit, the applicant shall have the burden of demonstrating that the particular improvement qualified for the credit under Section 3.17.070. The Director may deny the credit requested, in whole or in part, if it is determined that the credit application does not meet the requirements of Section 3.17.070 or that the improvement for which the credit is requested is not on the Project List in Appendix C, for credits allowed under Section 3.17.070B. An appeal from the Director's decision shall be heard by the county hearings officer in the manner provided in this section.
- C. The county shall have the right, but not the obligation, to participate in any appeal that, in the county's judgment, involves a significant issue or interpretation under this Chapter. The decision of the hearings officer shall be reviewable solely under ORS 34.010 through 34.100 in the Circuit Court of the county.

### **3.17.160 Transition.**

All deferrals, credits, and bancroft payment agreements shall continue and be administered under the terms in existence when issued except that all credits which have not previously expired, shall be valid for a period of ten years from the original date of acceptance of the improvement by the jurisdiction for credits. Only credits issued after the effective date of this ordinance shall be permitted to transfer from the property to which they were originally issued. Enactment of this ordinance shall in no way impact any budget or appropriations, contracts, permits, condemnation proceedings or any other formal actions pursuant to Ordinance No. 310 as amended and Ordinance No. 379 as amended. Enactment of this ordinance shall in no way impact any systems development charge, fee, or tax imposed by any city. This provision does not preclude any city from repealing or amending any such program, except that no credit or offset from the TDT shall be granted against any credit or amount due a city under a preexisting program.

### **3.17.170 Temporary Discount.**

- A. All TDT rate phase-ins, revised phase-ins and temporary discounts established in Ordinance 691-A-Engrossed, Ordinance 729 and A-Engrossed Ordinance 746 shall expire at the close of business on September 30, 2014.
- B. On or after October 1, 2014, the TDT rate shall be as stated in Appendix B to this Ordinance as adjusted by the index and shall be determined without regard to any discount, except as allowed by section 3.17.190.

### **3.17.190 Discount for Change-In-Use Developments**

- A. The purpose of this section is to provide a TDT discount to a defined group of new or altered uses within existing structures. This tax benefit is targeted to developments that reuse or redevelop existing structures, as defined. To receive a Change in Use discount under this section, the building and the proposed change in use must meet all applicable TDT code provisions, and a complete application must be timely filed with the Department, and approved by the Director.
- B. For developments eligible for a Change in Use discount under this section, the applicable TDT shall first be calculated as otherwise provided in this Chapter. The Change in Use discount, if applicable, shall be applied to the TDT as so calculated, following the Director's decision on the application.

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- C. Developments eligible for a Change in Use discount shall include all developments, as defined in 3.17.030Q, except those that construct a new building. Demolition of an existing structure followed by construction of a new building is deemed to be construction of a new building, and is not eligible. For any development that adds net square footage to an existing building, the added square footage shall not be eligible for the discount. For purposes of this section, “change in use” is defined as the development or redevelopment of an existing building for which a TDT is required to be paid, and for which a previous lawful use existed and paid TDT or TIF, or was lawfully established prior to the adoption of countywide TIF in 1990.
- D. To receive a Change In Use Discount, the development also must meet the following requirements:
1. The development is a physical alteration to an existing building, or change in use of the building, for which a Transportation Development Tax is otherwise due according to this chapter 3.17, and for which a change in TDT land use category under Appendix A, occurs.
  2. Prior to the Change in Use, the building was lawfully built and occupied with a previous use. The first use or occupancy of a building, regardless of the age of the building, shall not be eligible for a change of use discount.
  3. The TDT or TIF for the previous use was paid, or the previous use was lawfully established prior to the adoption of countywide TIF in 1990.
  4. The proposed use must be one of the land use categories listed in Appendix A to this Chapter that are calculated based on Total Square Foot Gross Floor Area or Total Square Foot Gross Leasable Area. Other land use categories shall not be eligible.
- E. Change in Use developments in the following buildings are eligible for a Change in Use discount:
1. Category 1 is a building that is three years old or older, based on the date of the certificate of occupancy of the building, as of the date of submittal of a discount application.
  2. Category 2 is a building that is twenty years old or older, based on the date of the certificate of occupancy of the building, as of the date of submittal of a discount application.
- F. The temporary discount for Change in Use Developments is as follows:
1. Category 1: Fifty percent of the TDT that would otherwise be due; and
  2. Category 2: Seventy-five percent of the TDT that would otherwise be due.

If a building includes a portion that is Category 1, and a portion that is Category 2, and the change in use premises is located in both portions, the discount shall be determined by the square footage within each section of the building.

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- G. The discount shall be applied to the first five thousand square feet of gross floor area of the proposed use that constitutes a change in use. For any change in use development that exceeds five thousand square feet of gross floor area, the TDT applicable to the remaining square footage shall be calculated as otherwise provided in this Chapter.
- H. No more than one Change-in-Use discount shall be allowed within a single building, within any two-year period. A discount may be allowed for multiple changes in use within a single building, so long as they are submitted as part of the same application. In the event multiple discount applications are submitted within the same building, the application submitted first shall receive the discount.
- I. Application
  - 1. The Director may adopt an application form for the Change in Use discount.
  - 2. A complete application must be submitted, signed by the property owner, development applicant, and occupant or proposed occupant of the structure or portion thereof, for which a discount is requested. The Director shall have sixty (60) days in which to render a decision on an application. It is the applicant's responsibility to submit an application in sufficient time to allow for a decision prior to issuance of a building or occupancy permit. Submittal of an application shall constitute consent by the applicant that a building or occupancy permit will not be issued for sixty (60) days from the date of the discount application or the date of the Change in Use discount decision, if earlier. The application shall state the name of the person or entity who will be paying the TDT. No application for the TDT Change in Use discount shall be accepted or acted upon after the TDT has been paid. An application for Change in Use discount may be withdrawn at any time by written notice to the Director, signed by the applicant, owner, and proposed occupant.
  - 3. The application must include all information required in this section 3.17.190 to make a determination of applicability of the change in use discount. It shall provide satisfactory evidence of each fact relating to the eligibility of the development for the discount, including but not limited to building age, payment of prior TIF or TDT, and the nature and extent of the previous use and the proposed use. The applicant has the burden of proof as to every fact necessary to make a determination as to eligibility for the Change in Use discount under this section.
  - 4. If an application is incomplete, the Director shall notify the applicant within ten (10) days. The applicant shall have ten (10) days from the date the notice was sent to provide additional information needed to complete the application. If the applicant does not submit sufficient information following notice, the Director may deny the application.
  - 5. The application shall include a drawing depicting the building and the premises within the building to which the Change In Use discount will apply.
  - 6. The application shall state the TDT use category for the previous use and for the proposed use, and the names of the occupants of the previous use and proposed use.

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7. The application shall include a statement of the square footage of the proposed use. If the proposed use is part of a building alteration that increases the net square footage, the application shall indicate if the proposed use is to be located in whole or in part within the newly built portion of the building.
- J. The Director shall consider the information in the application, and may review additional information relating to the application, including records of building permits, tax records, and any other information that he or she deems credible to determine or verify any matter required for his or her decision.
- K. If the Director finds that an application for the Change in Use discount includes a material misstatement of fact, that determination shall be grounds for denial of the application.
- L. The Director shall render a decision on an application for the Change in Use Discount in writing within sixty (60) days. The Director shall approve the application in whole or in part, or deny the application. If the decision is to approve in part or deny the application, the decision shall state the reasons for the denial. An applicant who disagrees with the Director's decision may appeal as provided in Section 3.17.150B.
- M. If the Director's decision is to approve, in whole or in part, the application for the Change in Use discount, the approved discount as stated in subsections F and G above shall be applied to the TDT assessment as otherwise calculated in this Chapter 3.17.

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