



## MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

Meeting date: June 20, 2018

Department: Community Services

Agenda Planning Date: June 14, 22018

Time required: 10 min

☐ Audio/Visual aids

Contact: Tom Hogue

Phone: 503-589-3277

Department Head Signature:

### TITLE

Consider second reading approval of an ordinance allowing property tax exemptions for eligible brownfield cleanup projects.

### Issue, Description & Background

Shall Marion County enact a property tax exemption program to encourage cleanup of properties contaminated by a previous owner?

Approval will allow local property owners to apply through the Marion County Assessor's Office. Each eligible application requires a supporting order from the Board of Commissioners and the concurrence of 75% of the taxing value entities. It is the applicant's responsibility to acquire supporting resolutions from the other taxing entities. If successful, the property owner will be exempt from property taxes on new and existing improvements and personal property until eligible cleanup costs are covered or the 10-year exemption period concludes, whichever occurs first.

The proposed ordinance is designed to keep administration as simple as possible. An application will be made to the Marion County Assessor's Office. Only locally assessed properties are eligible. The Assessor's Office will process applications for this new program and forward eligible applications to the Board of Commissioners for adoption of a supporting order. If the order is approved, and subsequent concurrence of the other taxing districts is secured, then the exemption must be managed and monitored.

The applicant must provide a site evaluation and a clean-up plan compliant with the Oregon Department of Environmental Quality regulations prepared by a qualified professional. This tax exemption cannot be concurrent with any other exemption, partial exemption or special assessment on the property. The current owner can not have caused, contributed to or exacerbated the release of hazardous substance on the site. The applicant must submit documentation of eligible costs. Eligible costs include site evaluations, demolition, abatement of future contamination, new improvements for containing or limiting future exposure of hazardous substances, project management, removal and disposal of contaminated material, and environmental audit and other similar costs. Eligible costs are reduced by any other state, federal or other grant moneys, tax credits, insurance proceeds or legal settlements received by the owner of the brownfield to offset clean-up costs.

This exemption provides last-resort funding to advance the public interest in responsible clean up of contaminated sites.

In 2016, the Oregon legislature enacted HB4084 which authorized local governments to adopt property tax incentive programs that grant special assessment to brownfields, or up to 100% exemption to new and existing improvements and personal property on brownfields for period of up to 10 years, with additional period up to five years based on locally adopted criteria.



## MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

### Financial Impacts:

Property taxes will not be collected on exempt new and existing improvements and personal property until the eligible cleanup costs are covered or the 10-year exemption period concludes, whichever occurs first. It is unknown how many applicants will be interested, and how many will be able to gather the concurrence of the other taxing districts.

The most likely applicant is anticipated to be a farm site acquired without the Phase I and Phase 2 environmental inspections which are ordinarily required by most lenders. The most likely clean-up needed will be where pesticide and fuel handling, or some historic farming practice, has left a residual hot spot for the new owner to clean up before investing in new or expanded buildings.

### Impacts to Department & External Agencies

The Marion County Assessor's office already manages other tax exemption programs. The Assessor's Office will process applications for this new program and forward eligible applications to the Board of Commissioners for adoption as a supporting order. If the order is approved, and subsequent concurrence of the other taxing districts is secured, then the exemption must be managed and monitored.

Other taxing districts will not receive taxes on new and existing exempt improvements and personal property until after the allowed exemption is complete.

### Options for Consideration:

Approve the ordinance.

Deny the ordinance.

### Recommendation:

Adopt the ordinance without modification.

### List of attachments:

Ordinance xxxx clean copy.  
Ordinance xxxx annotated copy.  
HB 4084

### Presenter:

Tom Hogue. Scott Norris. Tom Rohlfig.

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

### Copies to:

--

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance authorizing property tax )  
exemptions for qualified brownfield )  
properties pursuant to chapter 96, )  
Oregon Laws 2016 (House Bill 4084 )  
(2016)) ~~and declaring an emergency.~~ )

ORDINANCE NO. \_\_\_\_\_

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of this ordinance is to establish rules for the consideration of applications for exemption of "brownfield" properties, as that term is defined in ORS 285A.185, pursuant to chapter 96, Oregon Laws 2016 (House Bill 4084 (2016) (codified as a note following ORS 307.430)).

**Comment [SAN1]:** Section 1(3)(d) allows the county to adopt other provisions relating to an exemption which do not conflict with the terms of HB 4084.

SECTION 2. EXEMPTION OF QUALIFYING BROWNFIELD PROPERTIES

Properties satisfying the application and eligibility requirements set forth herein qualify for an exemption or partial exemption of improvements and personal property on land that constitutes a brownfield, as that term is defined in ORS 285A.185.

**Comment [SAN2]:** HB 4084 allows local government to adopt ordinance authorizing special assessment of land constituting a brownfield, exemption or partial exemption of improvements or personal property on brownfield land, or both. If both, section 1(3)(c) requires the two be granted concurrently.

SECTION 3. ELIGIBILITY REQUIREMENTS

An owner of a brownfield shall show in an application:

- A. That the owner or authorized representative of the owner has obtained, as applicable, a site evaluation, preliminary assessment, confirmation of release or remedial investigation of the brownfield prepared by a geologist registered under ORS 672.505 to 672.705 or a professional engineer as defined in ORS 672.002.
- B. If the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under section 3A above concludes

**Comment [SAN3]:** Section 1(2) requires eligibility requirements, which include, but are not limited to, the four listed here. The board could add additional eligibility requirements if it wishes.

that a remedial action, as defined in ORS 465.200, is required in response to the release of a hazardous substance at the brownfield, that the remedial action shall be conducted pursuant to an agreement with, an order of or a program or process authorized by the Oregon Department of Environmental Quality ("DEQ") under ORS 465.200 to 465.455 and 465.900.

- C. That the owner is in compliance with any agreement, order, program or process governing the conduct of the remedial action under section 3B above.
- D. That the report of the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under section 3A above, and a report prepared by a geologist or professional engineer showing that any remedial action has complied with any applicable agreement, order, program or process authorized by DEQ and with any other applicable state law administered by DEQ, have been submitted to DEQ.

#### SECTION 4. INELIGIBLE PROPERTY

- A. Property is not eligible for this exemption if, at the time an application for the property is filed, the property is:
  - 1. Subject to assessment under ORS 308.505 to 308.681.
  - 2. State-appraised industrial property as defined in ORS 306.126.
  - 3. Listed on the National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (a "Superfund site").
- B. For any property tax year, property granted any other special assessment, exemption or partial exemption is ineligible for this exemption.

SECTION 5. TERM OF EXEMPTION

This exemption shall last until the earlier of:

- A. Ten years; or
- B. The date on which the dollar amount of the exemption equals the eligible costs for the property as determined under section 9 below.

**Comment [SAN4]:** Section 1(3)(a)(B) allows an additional period, not to exceed 5 years, based on criteria set forth in the ordinance. If the board wanted to allow for an additional 5 year period, it would have to specify criteria (which could just be the four eligibility criteria set forth in section 2 above).

SECTION 6. AMENDMENT/REPEAL OF ORDINANCE

The Marion County Board of Commissioners may amend or repeal this ordinance at any time. However, property that is receiving an exemption when this ordinance is amended or repealed shall continue to receive the exemption pursuant to the codified version of this ordinance, as amended, when the property was initially granted the exemption.

SECTION 7. EFFECTIVE DATE OF EXEMPTION

This exemption does not become effective unless the rates of taxation of the taxing districts located within the county whose governing boards agree to the exemption described in this ordinance, when combined with the rate of taxation of the county, equal 75 percent or more of the total combined rate of taxation within the territory of the county. Once this exemption becomes effective, it shall be effective for the tax levies of all taxing districts in which a brownfield that is granted an exemption is located.

SECTION 8. APPLICATION

- A. The owner of a brownfield seeking this exemption must file an application, with the Assessor, on or before March 15 preceding the beginning of the property tax year for which the exemption is sought. A single application may be filed for brownfields in contiguous tax accounts under common ownership. Notwithstanding the foregoing, an application may be filed after March 15 and on or before December 31 if the application is accompanied by a late filing fee equal to the

**Comment [SAN5]:** Unless otherwise noted, tasks assigned to the Assessor in this ordinance may be assigned to the governing body.

**Formatted:** Highlight

greater of \$200 or one-tenth of one percent of the real market value of the property to which the application relates as of the assessment date for that tax year.

B. An application must include:

1. The address of the brownfield.
2. Documentation showing the ownership of the property by the person filing the application.
3. An affidavit signed by the owner of the brownfield under penalty of perjury affirming that the owner has not, by any acts, or omissions where there is a duty to act, caused, contributed to or exacerbated the release of a hazardous substance at the brownfield for which the eligible costs as determined under section 9 below are to be incurred.
4. Documentation showing that all applicable eligibility requirements have been met.
5. Documentation of estimated eligible costs with respect to the brownfield prepared by DEQ or by a person unrelated to the owner of the brownfield and having expertise in estimating such costs.
6. An application fee, if any, required by the county. The county may adopt an application fee by board order.

C. The application shall be reviewed by the **Assessor**. Upon request, DEQ may consult with the **Assessor** regarding remedial action costs included in the application as eligible costs. The **Assessor** may consult with the owner of the brownfield about the application, and the owner may amend the application.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

D. If the **Assessor** determines that the application does not meet the requirements of this ordinance, the **Assessor** shall present the application and the facts supporting the **Assessor's** conclusion to the board. The board shall consider the information provided by the **Assessor** and either issue an order determining the brownfield to be ineligible or give direction to the **Assessor** to take further steps to determine eligibility. If the board issues an order determining the brownfield to be ineligible, the **Assessor** shall promptly notify the owner of the brownfield in writing that the application is not approved, stating the reasons for the determination. A determination of ineligibility is not reviewable, but the owner of the brownfield may file an application under this section for any subsequent year.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

E. If the **Assessor** determines that the application meets the requirements of this ordinance, the **Assessor** shall promptly ~~present the board with an order to~~ approve and certify the period for which the exemption is granted and the estimated eligible costs with respect to the brownfield ~~and~~

Formatted: Highlight

Formatted: Highlight

Formatted: Indent: Left: 0.5"

~~2. If the board adopts an order to approve the exemption, the **Assessor** shall~~ notify the owner of the brownfield in writing that the application is approved. If the board does not adopt an order to approve the exemption, it may give direction to the **Assessor** to take further steps on the application.

Formatted: Highlight

Formatted: Highlight

F. The **Assessor** may charge the owner a fee of up to \$200 for the first year and up to \$100 for each subsequent year for which the exemption is granted to compensate the **Assessor** for duties imposed by this ordinance. This fee is in addition to any application fee which the board may adopt by order.

Comment [SAN6]: Authority to charge this fee is statutorily assigned to the Assessor.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

G. The transfer of the brownfield in an arm's-length transaction shall not disqualify the property from the exemption granted to the property under the ownership of the transferor provided the transferee:

1. Notifies the Assessor as soon as practicable of the transfer;
2. Files an affidavit described in section 8B(3) above; and
3. Complies with all requirements of this ordinance.

Formatted: Highlight

////

////

////

SECTION 9. ELIGIBLE COSTS

A. Eligible costs equal the discounted present value of estimated after-tax costs directly related to the remaining work necessary to remove, contain or treat the contamination of a brownfield.

B. Eligible costs may include:

1. Remedial action costs as defined in ORS 465.200, including costs for a site evaluation, preliminary assessment, confirmation of release or remedial investigation performed by a geologist or professional engineer without the oversight or approval of DEQ.
2. The costs of demolishing existing improvements on the brownfield as necessary for removal or remedial action, as those terms are defined in ORS 465.200.
3. The costs of abating the release of hazardous substances within existing improvements on the brownfield.
4. The costs of new improvements constructed on the brownfield for the purpose of containing hazardous substances or limiting exposure to the release of hazardous substances.



5. The costs of managing, handling, removing, treating and disposing of solid waste, environmental media and building materials containing hazardous substances in the course of redeveloping the brownfield.
  6. The costs of environmental audits, surety bonds, insurance, engineering and legal fees and monitoring other than water monitoring.
- C. For purposes of section 8B(5) above, documentation of eligible costs may include, but is not limited to, bids, cost estimates, remediation plans, copies of contracts, notes and minutes of contract negotiations, and accounts, invoices, sales receipts and other payment records of purchases, sales, leases and other transactions relating to the eligible costs.
- D. Eligible costs shall be reduced by the amount of any state, federal or other grant moneys, tax credits, insurance proceeds or legal settlements received by the owner of the brownfield to offset eligible costs for the brownfield.

SECTION 10. EXEMPTION PERCENTAGE; APPLICABILITY TO NEW PROPERTY; NOTATION ON TAX ROLL

- A. An approval of an exemption shall state the percentage, up to 100%, of exemption to be applied to the real market value of the improvements and personal property. ORS 307.032 applies to improvements and personal property granted partial exemption.
- B. The exemption or partial exemption shall apply to new or existing property of any classification under applicable Oregon Department of Revenue rules.

**Comment [SAN7]:** Section 5(1) requires the ordinance to state the percentage of exemption. The ordinance could contain a fixed percentage, or allow for flexibility (i.e., up to 100% as I've done here) depending upon the circumstances.

- C. Each year the Assessor shall add to the assessment and tax rolls of the county, with respect to the improvements and personal property granted exemption or partial exemption, the notation "potential additional tax."

**Comment [SAN8]:** This task is statutorily assigned to the Assessor.

**Formatted:** Highlight

#### SECTION 11. PROCEDURES FOR MONITORING AND VERIFYING COMPLIANCE

- A. By April 1 of each tax year subject to exemption, the owner shall provide a written report to the Assessor detailing, for the previous tax year:

**Formatted:** Highlight

1. The owner's continued compliance with all eligibility requirements set forth in section 3 above; and
2. The owner's progress on remediation or redevelopment of the brownfield.

- B. The owner shall attach to the report all documentation necessary to substantiate compliance with sections 11A(1) and 11A(2) above.

- C. The Assessor shall review the report for compliance with the requirements of sections 11A and 11B above. The Assessor may request additional documentation from the owner in order to verify compliance with sections 11A(1) and 11A(2) above.

**Formatted:** Highlight

**Formatted:** Highlight

- D. At any point while the property is subject to exemption, the Assessor may request an inspection of the subject property or any documents which would substantiate compliance with sections 11A(1) and 11A(2) above.

**Formatted:** Highlight

#### SECTION 12. DISQUALIFICATION

- A. Property that is granted an exemption shall continue to receive the exemption until the property is disqualified by the earliest of:
1. The expiration of the period for which the exemption was certified under section 8 above.

2. The date on which the dollar amount of the exemption equals the eligible costs for the property as determined under section 9 above.
  3. The discovery by the **Assessor** that the owner of the brownfield has failed to:
    - a. Comply with the eligibility requirements set forth in section 3 above;
    - b. Begin or make reasonable progress on remediation or redevelopment of the brownfield; or
    - c. File any required reports.
  4. The discovery by the **Assessor** that any statement or representation in any documentation filed pursuant to section 8 above was misleading or false.
- B. The **Assessor** may provide an owner with the opportunity to cure the grounds for disqualification under section 12A above.
- C. Upon disqualification the property shall be assessed and taxed under ORS 308.146.
- D. Upon disqualification, there shall be added to the tax extended against the improvements or personal property on the next assessment and tax roll, to be collected and distributed in the same manner as other property taxes, additional taxes, equal to the difference between the taxes assessed against the property and the taxes that otherwise would have been assessed against the property if the property had not been granted exemption or partial exemption, for all years for which the property was granted exemption or partial exemption.
- E. Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

- F. The amount of additional taxes determined to be due under this section may be paid to the tax collector prior to the completion of the next assessment and property tax roll pursuant to ORS 311.370.

SECTION 13. SUNSET

Sections 1 to 12 of this ordinance are repealed on January 2, 2027. However, property that has been granted an exemption before January 2, 2027 shall continue to receive the exemption for the period of time for which the exemption was granted.

SECTION 14. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, that decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

~~SECTION 15. DECLARATION OF EMERGENCY~~

~~This ordinance being necessary for the preservation of the health, safety, and welfare of the community, an emergency is declared to exist and this ordinance will take effect immediately.~~

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance authorizing property tax )  
exemptions for qualified brownfield )  
properties pursuant to chapter 96, )  
Oregon Laws 2016 (House Bill 4084 )  
(2016)). )

ORDINANCE NO. \_\_\_\_\_

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of this ordinance is to establish rules for the consideration of applications for exemption of "brownfield" properties, as that term is defined in ORS 285A.185, pursuant to chapter 96, Oregon Laws 2016 (House Bill 4084 (2016) (codified as a note following ORS 307.430)).

SECTION 2. EXEMPTION OF QUALIFYING BROWNFIELD PROPERTIES

Properties satisfying the application and eligibility requirements set forth herein qualify for an exemption or partial exemption of improvements and personal property on land that constitutes a brownfield, as that term is defined in ORS 285A.185.

SECTION 3. ELIGIBILITY REQUIREMENTS

An owner of a brownfield shall show in an application:

- A. That the owner or authorized representative of the owner has obtained, as applicable, a site evaluation, preliminary assessment, confirmation of release or remedial investigation of the brownfield prepared by a geologist registered under ORS 672.505 to 672.705 or a professional engineer as defined in ORS 672.002.
- B. If the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under section 3A above concludes

that a remedial action, as defined in ORS 465.200, is required in response to the release of a hazardous substance at the brownfield, that the remedial action shall be conducted pursuant to an agreement with, an order of or a program or process authorized by the Oregon Department of Environmental Quality ("DEQ") under ORS 465.200 to 465.455 and 465.900.

- C. That the owner is in compliance with any agreement, order, program or process governing the conduct of the remedial action under section 3B above.
- D. That the report of the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under section 3A above, and a report prepared by a geologist or professional engineer showing that any remedial action has complied with any applicable agreement, order, program or process authorized by DEQ and with any other applicable state law administered by DEQ, have been submitted to DEQ.

#### SECTION 4. INELIGIBLE PROPERTY

- A. Property is not eligible for this exemption if, at the time an application for the property is filed, the property is:
  - 1. Subject to assessment under ORS 308.505 to 308.681.
  - 2. State-appraised industrial property as defined in ORS 306.126.
  - 3. Listed on the National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (a "Superfund site").
- B. For any property tax year, property granted any other special assessment, exemption or partial exemption is ineligible for this exemption.

SECTION 5. TERM OF EXEMPTION

This exemption shall last until the earlier of:

- A. Ten years; or
- B. The date on which the dollar amount of the exemption equals the eligible costs for the property as determined under section 9 below.

SECTION 6. AMENDMENT/REPEAL OF ORDINANCE

The Marion County Board of Commissioners may amend or repeal this ordinance at any time. However, property that is receiving an exemption when this ordinance is amended or repealed shall continue to receive the exemption pursuant to the codified version of this ordinance, as amended, when the property was initially granted the exemption.

SECTION 7. EFFECTIVE DATE OF EXEMPTION

This exemption does not become effective unless the rates of taxation of the taxing districts located within the county whose governing boards agree to the exemption described in this ordinance, when combined with the rate of taxation of the county, equal 75 percent or more of the total combined rate of taxation within the territory of the county. Once this exemption becomes effective, it shall be effective for the tax levies of all taxing districts in which a brownfield that is granted an exemption is located.

SECTION 8. APPLICATION

- A. The owner of a brownfield seeking this exemption must file an application, with the Assessor, on or before March 15 preceding the beginning of the property tax year for which the exemption is sought. A single application may be filed for brownfields in contiguous tax accounts under common ownership. Notwithstanding the foregoing, an application may be filed after March 15 and on or before December 31 if the application is accompanied by a late filing fee equal to the

greater of \$200 or one-tenth of one percent of the real market value of the property to which the application relates as of the assessment date for that tax year.

B. An application must include:

1. The address of the brownfield.
2. Documentation showing the ownership of the property by the person filing the application.
3. An affidavit signed by the owner of the brownfield under penalty of perjury affirming that the owner has not, by any acts, or omissions where there is a duty to act, caused, contributed to or exacerbated the release of a hazardous substance at the brownfield for which the eligible costs as determined under section 9 below are to be incurred.
4. Documentation showing that all applicable eligibility requirements have been met.
5. Documentation of estimated eligible costs with respect to the brownfield prepared by DEQ or by a person unrelated to the owner of the brownfield and having expertise in estimating such costs.
6. An application fee, if any, required by the county. The county may adopt an application fee by board order.

C. The application shall be reviewed by the Assessor. Upon request, DEQ may consult with the Assessor regarding remedial action costs included in the application as eligible costs. The Assessor may consult with the owner of the brownfield about the application, and the owner may amend the application.



- D. If the Assessor determines that the application does not meet the requirements of this ordinance, the Assessor shall present the application and the facts supporting the Assessor's conclusion to the board. The board shall consider the information provided by the Assessor and either issue an order determining the brownfield to be ineligible or give direction to the Assessor to take further steps to determine eligibility. If the board issues an order determining the brownfield to be ineligible, the Assessor shall promptly notify the owner of the brownfield in writing that the application is not approved, stating the reasons for the determination. A determination of ineligibility is not reviewable, but the owner of the brownfield may file an application under this section for any subsequent year.
- E. If the Assessor determines that the application meets the requirements of this ordinance, the Assessor shall promptly present the board with an order to approve and certify the period for which the exemption is granted and the estimated eligible costs with respect to the brownfield. If the board adopts an order to approve the exemption, the Assessor shall notify the owner of the brownfield in writing that the application is approved. If the board does not adopt an order to approve the exemption, it may give direction to the Assessor to take further steps on the application.
- F. The Assessor may charge the owner a fee of up to \$200 for the first year and up to \$100 for each subsequent year for which the exemption is granted to compensate the Assessor for duties imposed by this ordinance. This fee is in addition to any application fee which the board may adopt by order.

- G. The transfer of the brownfield in an arm's-length transaction shall not disqualify the property from the exemption granted to the property under the ownership of the transferor provided the transferee:
1. Notifies the Assessor as soon as practicable of the transfer;
  2. Files an affidavit described in section 8B(3) above; and
  3. Complies with all requirements of this ordinance.

////

////

////

SECTION 9. ELIGIBLE COSTS

- A. Eligible costs equal the discounted present value of estimated after-tax costs directly related to the remaining work necessary to remove, contain or treat the contamination of a brownfield.
- B. Eligible costs may include:
1. Remedial action costs as defined in ORS 465.200, including costs for a site evaluation, preliminary assessment, confirmation of release or remedial investigation performed by a geologist or professional engineer without the oversight or approval of DEQ.
  2. The costs of demolishing existing improvements on the brownfield as necessary for removal or remedial action, as those terms are defined in ORS 465.200.
  3. The costs of abating the release of hazardous substances within existing improvements on the brownfield.
  4. The costs of new improvements constructed on the brownfield for the purpose of containing hazardous substances or limiting exposure to the release of hazardous substances.

5. The costs of managing, handling, removing, treating and disposing of solid waste, environmental media and building materials containing hazardous substances in the course of redeveloping the brownfield.
  6. The costs of environmental audits, surety bonds, insurance, engineering and legal fees and monitoring other than water monitoring.
- C. For purposes of section 8B(5) above, documentation of eligible costs may include, but is not limited to, bids, cost estimates, remediation plans, copies of contracts, notes and minutes of contract negotiations, and accounts, invoices, sales receipts and other payment records of purchases, sales, leases and other transactions relating to the eligible costs.
  - D. Eligible costs shall be reduced by the amount of any state, federal or other grant moneys, tax credits, insurance proceeds or legal settlements received by the owner of the brownfield to offset eligible costs for the brownfield.

SECTION 10. EXEMPTION PERCENTAGE; APPLICABILITY TO NEW PROPERTY; NOTATION ON TAX ROLL

- A. An approval of an exemption shall state the percentage, up to 100%, of exemption to be applied to the real market value of the improvements and personal property. ORS 307.032 applies to improvements and personal property granted partial exemption.
- B. The exemption or partial exemption shall apply to new or existing property of any classification under applicable Oregon Department of Revenue rules.

- C. Each year the Assessor shall add to the assessment and tax rolls of the county, with respect to the improvements and personal property granted exemption or partial exemption, the notation "potential additional tax."

SECTION 11. PROCEDURES FOR MONITORING AND VERIFYING COMPLIANCE

- A. By April 1 of each tax year subject to exemption, the owner shall provide a written report to the Assessor detailing, for the previous tax year:
  - 1. The owner's continued compliance with all eligibility requirements set forth in section 3 above; and
  - 2. The owner's progress on remediation or redevelopment of the brownfield.
- B. The owner shall attach to the report all documentation necessary to substantiate compliance with sections 11A(1) and 11A(2) above.
- C. The Assessor shall review the report for compliance with the requirements of sections 11A and 11B above. The Assessor may request additional documentation from the owner in order to verify compliance with sections 11A(1) and 11A(2) above.
- D. At any point while the property is subject to exemption, the Assessor may request an inspection of the subject property or any documents which would substantiate compliance with sections 11A(1) and 11A(2) above.

SECTION 12. DISQUALIFICATION

- A. Property that is granted an exemption shall continue to receive the exemption until the property is disqualified by the earliest of:
  - 1. The expiration of the period for which the exemption was certified under section 8 above.

2. The date on which the dollar amount of the exemption equals the eligible costs for the property as determined under section 9 above.
  3. The discovery by the Assessor that the owner of the brownfield has failed to:
    - a. Comply with the eligibility requirements set forth in section 3 above;
    - b. Begin or make reasonable progress on remediation or redevelopment of the brownfield; or
    - c. File any required reports.
  4. The discovery by the Assessor that any statement or representation in any documentation filed pursuant to section 8 above was misleading or false.
- B. The Assessor may provide an owner with the opportunity to cure the grounds for disqualification under section 12A above.
- C. Upon disqualification the property shall be assessed and taxed under ORS 308.146.
- D. Upon disqualification, there shall be added to the tax extended against the improvements or personal property on the next assessment and tax roll, to be collected and distributed in the same manner as other property taxes, additional taxes, equal to the difference between the taxes assessed against the property and the taxes that otherwise would have been assessed against the property if the property had not been granted exemption or partial exemption, for all years for which the property was granted exemption or partial exemption.
- E. Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.

- F. The amount of additional taxes determined to be due under this section may be paid to the tax collector prior to the completion of the next assessment and property tax roll pursuant to ORS 311.370.

SECTION 13. SUNSET

Sections 1 to 12 of this ordinance are repealed on January 2, 2027. However, property that has been granted an exemption before January 2, 2027 shall continue to receive the exemption for the period of time for which the exemption was granted.

SECTION 14. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, that decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## Enrolled House Bill 4084

Sponsored by Representatives MCKEOWN, FREDERICK, GORSEK, DAVIS; Representatives EVANS, FAGAN, HACK, HOLVEY, JOHNSON, KENY-GUYER, LININGER, LIVELY, MCLAIN, NOSSE, PILUSO, RAYFIELD, REARDON, Senators EDWARDS, HANSELL, ROBLAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to tax incentives for brownfield cleanups; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** (1) The governing body of a city or county, or of a port organized under ORS chapter 777 or 778, may adopt an ordinance or resolution providing for programs that offer either or both of the following ad valorem property tax incentive benefits:

(a) Special assessment of any land that constitutes a brownfield, as defined in ORS 285A.185, located within the respective jurisdiction of the city, county or port.

(b) Exemption or partial exemption of improvements and personal property on land described in paragraph (a) of this subsection.

(2)(a) An ordinance or resolution adopted under this section shall specify the eligibility requirements for the programs, including, but not limited to, a showing by the owner of a brownfield in an application filed under section 2 of this 2016 Act:

(A) That the owner or authorized representative of the owner has obtained, as applicable, a site evaluation, preliminary assessment, confirmation of release or remedial investigation of the brownfield prepared by a geologist registered under ORS 672.505 to 672.705 or a professional engineer as defined in ORS 672.002.

(B) If the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under subparagraph (A) of this paragraph concludes that a remedial action, as defined in ORS 465.200, is required in response to the release of a hazardous substance at the brownfield, that the remedial action shall be conducted pursuant to an agreement with, an order of or a program or process authorized by the Department of Environmental Quality under ORS 465.200 to 465.455 and 465.900.

(C) That the owner is in compliance with any agreement, order, program or process governing the conduct of the remedial action under subparagraph (B) of this paragraph.

(D) That the report of the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under subparagraph (A) of this paragraph, and a report prepared by a geologist or professional engineer showing that any remedial action has complied with any applicable agreement, order, program or process authorized by the department and with any other applicable state law administered by the department, have been submitted to the department.

(b) Notwithstanding paragraph (a) of this subsection, property is not eligible for tax incentive programs adopted pursuant to this section if, at the time an application for the property is filed under section 2 of this 2016 Act, the property is:

- (A) Subject to assessment under ORS 308.505 to 308.681;
- (B) State-appraised industrial property as defined in ORS 306.126; or
- (C) A federal Superfund site.

(c) For any property tax year, property granted any other special assessment, exemption or partial exemption may not be granted benefits under a tax incentive program adopted pursuant to this section.

(3)(a)(A) An ordinance or resolution adopted under this section shall specify the period, not to exceed 10 years, for which the property tax incentive program benefits may be granted.

(B) The ordinance or resolution may allow for an additional period, not to exceed five years, based on criteria set forth in the ordinance or resolution.

(b) Property may be granted a tax incentive program benefit under this section until the earlier of:

(A) The expiration of the period for which the property is eligible for the benefit under paragraph (a) of this subsection; or

(B) The date on which the dollar amount of the benefit equals the eligible costs for the property as determined under section 3 of this 2016 Act.

(c) If a city, county or port adopts both a special assessment and an exemption or partial exemption program, the two program benefits must be granted concurrently for any property.

(d) The city, county or port may adopt any other provisions relating to the property tax incentive programs that do not conflict with the requirements of sections 1 to 7 of this 2016 Act.

(4)(a) The city, county or port may amend or repeal an ordinance or resolution adopted under this section at any time.

(b) Notwithstanding paragraph (a) of this subsection, property that is receiving a tax incentive program benefit under this section when the ordinance or resolution is amended or repealed shall continue to receive the benefit pursuant to the provisions of the ordinance or resolution in effect when the property was initially granted the benefit.

(5)(a) An ordinance or resolution adopted under this section does not become effective unless the rates of taxation of the taxing districts located within territory of the city, county or port whose governing boards agree to the property tax incentive programs, when combined with the rate of taxation of the city, county or port that adopted the ordinance or resolution, equal 75 percent or more of the total combined rate of taxation within the territory of the city, county or port.

(b) If an ordinance or resolution becomes effective pursuant to paragraph (a) of this subsection, the property tax incentive programs shall be effective for the tax levies of all taxing districts in which a brownfield that is granted a property tax incentive program benefit is located.

**SECTION 2.** (1)(a) The owner of a brownfield seeking a property tax incentive program benefit for the brownfield or improvements and personal property on the brownfield under an ordinance or resolution adopted pursuant to section 1 of this 2016 Act must file an application, with the governing body of the city, county or port that adopted the ordinance or resolution, on or before March 15 preceding the beginning of the property tax year for which the property tax incentive program benefit is sought. A single application may be filed for brownfields in contiguous tax accounts under common ownership.

(b) Notwithstanding paragraph (a) of this subsection, an application may be filed after March 15 and on or before December 31 if the application is accompanied by a late filing fee



equal to the greater of \$200 or one-tenth of one percent of the real market value of the property to which the application relates as of the assessment date for that tax year.

(2) An application filed pursuant to this section must include:

(a) The address of the brownfield.

(b) Documentation showing the ownership of the property by the person filing the application.

(c) An affidavit signed by the owner of the brownfield under penalty of perjury affirming that the owner has not, by any acts, or omissions where there is a duty to act, caused, contributed to or exacerbated the release of a hazardous substance at the brownfield for which the eligible costs as determined under section 3 of this 2016 Act are to be incurred.

(d) Documentation showing that all applicable eligibility requirements have been met.

(e) Documentation of estimated eligible costs with respect to the brownfield prepared by the Department of Environmental Quality or by a person unrelated to the owner of the brownfield and having expertise in estimating such costs.

(f) An application fee, if any, required by the city, county or port.

(3) The application shall be reviewed by the city, county or port. Upon request, the Department of Environmental Quality may consult with the city, county or port regarding remedial action costs included in the application as eligible costs. The city, county or port may consult with the owner of the brownfield about the application, and the owner may amend the application.

(4)(a) If the city, county or port determines that the application does not meet the requirements of this section, the city, county or port shall promptly notify the owner of the brownfield in writing that the application is not approved, stating the reasons for the determination. A determination under this paragraph is not reviewable, but the owner of the brownfield may file an application under this section for any subsequent year.

(b) If the city, county or port determines that the application meets the requirements of this section, the city, county or port shall promptly:

(A) Notify the owner of the brownfield in writing that the application is approved; and

(B) Notify the county assessor in writing that the application is approved and certifying the period for which the property tax incentive program benefit is granted and the estimated eligible costs with respect to the brownfield.

(5) The assessor of the county in which the property granted a property tax incentive program benefit is located may charge the owner a fee of up to \$200 for the first year and up to \$100 for each subsequent year for which the benefit is granted to compensate the assessor for duties imposed under sections 1 to 7 of this 2016 Act.

(6) The transfer of the brownfield in an arm's-length transaction shall not disqualify the property from the property tax incentive program benefits granted to the property under the ownership of the transferor provided the transferee:

(a) Notifies the city, county or port and the county assessor as soon as practicable of the transfer;

(b) Files an affidavit described in subsection (2)(c) of this section; and

(c) Complies with all requirements under sections 1 to 7 of this 2016 Act.

**SECTION 3.** (1) For purposes of sections 1 to 7 of this 2016 Act, eligible costs equal the discounted present value of estimated after-tax costs directly related to the remaining work necessary to remove, contain or treat the contamination of a brownfield.

(2) Eligible costs may include:

(a) Remedial action costs as defined in ORS 465.200, including costs for a site evaluation, preliminary assessment, confirmation of release or remedial investigation performed by a geologist or professional engineer without the oversight or approval of the Department of Environmental Quality.

(b) The costs of demolishing existing improvements on the brownfield as necessary for removal or remedial action, as those terms are defined in ORS 465.200.

(c) The costs of abating the release of hazardous substances within existing improvements on the brownfield.

(d) The costs of new improvements constructed on the brownfield for the purpose of containing hazardous substances or limiting exposure to the release of hazardous substances.

(e) The costs of managing, handling, removing, treating and disposing of solid waste, environmental media and building materials containing hazardous substances in the course of redeveloping the brownfield.

(f) The costs of environmental audits, surety bonds, insurance, engineering and legal fees and monitoring other than water monitoring.

(3) For purposes of section 2 (2)(e) of this 2016 Act, documentation of eligible costs may include, but is not limited to, bids, cost estimates, remediation plans, copies of contracts, notes and minutes of contract negotiations, and accounts, invoices, sales receipts and other payment records of purchases, sales, leases and other transactions relating to the eligible costs.

(4) Eligible costs shall be reduced by the amount of any state, federal or other grant moneys, tax credits, insurance proceeds or legal settlements received by the owner of the brownfield to offset eligible costs for the brownfield.

**SECTION 4.** (1)(a) For the first property tax year of the period for which special assessment is certified under section 2 of this 2016 Act for land constituting a brownfield, the county assessor shall list on the assessment and tax roll a specially assessed value for the land that equals the real market value the land would have if it were not a brownfield less the eligible costs determined under section 3 of this 2016 Act and apportioned to each tax account included in the application. The specially assessed value of the land determined under this subsection shall be listed on the assessment and tax rolls for the number of years certified for the land under section 2 of this 2016 Act.

(b) Notwithstanding paragraph (a) of this subsection, the specially assessed value of the land may not be less than \$100 for any property tax year.

(2)(a) For the first property tax year for which the land is specially assessed, the maximum assessed value of the land shall equal the specially assessed value of the land determined under subsection (1) of this section multiplied by the ratio, not greater than 1.00, of the average maximum assessed value divided by the average real market value, as those terms are defined in ORS 308.149.

(b) For each property tax year after the first property tax year for which the land is specially assessed, the maximum assessed value of the land shall equal the greater of 103 percent of the assessed value of the land from the prior year or 100 percent of the maximum assessed value of the land from the prior year.

(3) For each property tax year for which the land is specially assessed, the assessed value of the land shall equal the least of:

(a) The specially assessed value of the land as determined under subsection (1) of this section;

(b) The maximum assessed value of the land as determined under subsection (2) of this section; or

(c) The real market value of the land as of the assessment date for the tax year.

(4) The entitlement of land to the special assessment provisions of this section shall be determined as of July 1. If the land becomes disqualified on or after July 1, the land shall be specially assessed for the property tax year as provided in this section.

(5) Each year the county assessor shall add to the assessment and tax rolls of the county, with respect to land specially assessed under this section, the notation "potential additional tax."

**SECTION 5.** (1) An ordinance or resolution adopted under section 1 of this 2016 Act providing for exemption or partial exemption of improvements and personal property on a

brownfield must state the percentage of the exemption to be applied to the real market value of the improvements and personal property.

(2) The exemption or partial exemption shall apply to new or existing property of any classification under rules established by the Department of Revenue pursuant to ORS 308.215 (1)(a)(C).

(3) ORS 307.032 applies to improvements and personal property granted partial exemption under the ordinance or resolution.

(4) Each year the county assessor shall add to the assessment and tax rolls of the county, with respect to the improvements and personal property granted exemption or partial exemption under this section, the notation "potential additional tax."

**SECTION 6.** (1) Each year, on or before a date prescribed by the city, county or port that adopted the ordinance or resolution under section 1 of this 2016 Act, pursuant to which land constituting a brownfield is specially assessed, the owner of the land shall submit documentation of actual eligible costs incurred and an updated estimate of the eligible costs to the city, county or port, as applicable.

(2)(a) If the updated estimate of the eligible costs is greater or less than the original estimate by 10 percent or more, the city, county or port shall submit the documentation and updated estimate to the assessor of the county in which the land is located.

(b) Upon receipt, the county assessor shall recompute the specially assessed value and maximum assessed value of the land under section 4 of this 2016 Act, beginning with the first year for which the land was granted special assessment.

(c) The values as recomputed under this section shall apply to the remaining period for which the land has been granted the special assessment. Delinquent taxes may not be assessed or collected, and refunds may not be paid, as a consequence of the recomputation under this section for property tax years preceding the remaining period.

**SECTION 7.** (1) Property that is granted a property tax incentive program benefit pursuant to an ordinance or resolution adopted under section 1 of this 2016 Act shall continue to receive the benefit until the property is disqualified by the earliest of:

(a) The expiration of the period for which the benefit was certified under section 2 of this 2016 Act.

(b) The date on which the dollar amount of the benefit equals the eligible costs for the property as determined under section 3 of this 2016 Act.

(c) The discovery by the city, county or port that the owner of the brownfield has failed to:

(A) Comply with the eligibility requirements adopted by the city, county or port;

(B) Begin or make reasonable progress on remediation or redevelopment of the brownfield; or

(C) File any required reports.

(d) The discovery by the city, county or port that any statement or representation in any documentation filed pursuant to section 2 of this 2016 Act was misleading or false.

(2) The city, county or port may provide an owner with the opportunity to cure the grounds for disqualification under subsection (1) of this section.

(3) The city, county or port shall notify the county assessor of the disqualification of property from special assessment or exemption or partial exemption under this section, and upon disqualification the property shall be assessed and taxed under ORS 308.146.

(4) Upon disqualification of land constituting a brownfield from special assessment under subsection (1)(c) or (d) of this section, in addition to any other remedy provided by law, there shall be added to the tax extended against the land on the next assessment and tax roll, to be collected and distributed in the same manner as other property taxes, additional taxes equal to the potential additional taxes noted on the roll for the land for all years for which the land was specially assessed under section 4 of this 2016 Act.

(5) Upon disqualification of improvements or personal property on land constituting a brownfield from exemption or partial exemption under subsection (1)(c) or (d) of this section, there shall be added to the tax extended against the improvements or personal property on the next assessment and tax roll, to be collected and distributed in the same manner as other property taxes, additional taxes, equal to the difference between the taxes assessed against the property and the taxes that otherwise would have been assessed against the property if the property had not been granted exemption or partial exemption, for all years for which the property was granted exemption or partial exemption.

(6) Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.

(7) The amount of additional taxes determined to be due under this section may be paid to the tax collector prior to the completion of the next assessment and property tax roll pursuant to ORS 311.370.

**SECTION 8.** (1) Sections 1 to 7 of this 2016 Act are repealed on January 2, 2027.

(2) Notwithstanding subsection (1) of this section, property that has been granted a property tax incentive program benefit under sections 1 to 7 of this 2016 Act before the date specified in subsection (1) of this section, shall continue to receive the benefit for the period of time for which the benefit was granted.

**SECTION 9.** 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 House February 19, 2016

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

Passed by Senate February 29, 2016

.....  
Peter Courtney, President of Senate

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