

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

§ 1936. Payment of Developer Tax.

(a) *Estimated Payment.* Any person to whom the developer tax under this chapter applies shall pay an estimated payment of the tax based upon the statement of total project cost as verified by the building safety official. Such estimated payment must be paid to the Department of Finance and a receipt therefor presented to the building safety official prior to the issuance of a building permit by the building safety official. The director may authorize by regulation a schedule of payments for payment of the developer tax; provided, however, that the initial payment must be at least 50 percent of the total estimated developer tax due.

(b) If, after the estimated developer tax has been paid and the developer makes a change order which changes the estimated total project cost, the developer shall submit a statement of the change order(s) to the Director of Finance and pay any resultant developer tax due at the conclusion of the project.

(c) *Final Payment.* Upon completion of the project, the developer shall submit a statement of the actual total project cost to the Department of Finance including any adjustments in total project cost resulting from change orders. The developer shall make available documentation to the Department of Finance sufficient to substantiate the total project cost. The developer shall be liable for the total amount of tax owed under this chapter based on this final total project cost less any previous tax payments or credits which have been received by the Director of Finance and approved for credit against the developer's tax liability. The Director of Finance may require that the statement be audited by a certified public accountant. If the director finds that the estimated total project cost is less than 85 percent accurate with respect to the actual total project cost, including change orders, the developer shall pay the remainder tax due plus a 10 percent penalty.

An occupancy permit shall not be issued by the Building Safety Division unless the developer has paid the remainder of the developer tax due, provided that an occupancy permit may be issued for any reasonably severable portion of the project of which the estimated tax has been paid. If the total estimated project cost including change orders exceeds thirty million dollars and the developer is making payments under a schedule of payments provided for in subsection (a) of this section, upon certification by the Secretary of Finance that the developer is current in its payments an occupancy permit may be issued for any completed portion of the project prior to payment of the remainder of the tax due for the completed project; but if the Secretary of Finance subsequently notifies the Building Safety Division that the developer has failed to make tax payments as scheduled the occupancy permit shall be revised to include only any reasonably severable portion of the project for which the estimated tax has been paid, or revoked, as appropriate.

(d) *Overpayment of Developer Tax.* Any overpayment of the developer tax shall be refunded to the developer within 90 days.

(e) *Unfinished Development.* If a developer purchases an unfinished development in which the previous owner had already paid the estimated developer tax

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due, the new owner shall not be required to pay the developer tax, provided that he makes no changes on the original scope of the project.

Source: PL 8-23, § 8; second paragraph of subsection (c) amended by PL 11-37, § 2.

Commission Comment: With respect to the references to the “Department of Finance,” the “Director of Finance, and the “director” of the Department of Finance, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

PL 11-37, which deleted the second paragraph of subsection (c) and replaced it with a new paragraph, took effect September 17, 1998. According to PL 11-37, § 1:

Section 1. Findings and Purpose. The Legislature finds that:

(a) The provision in the Developer Infrastructure tax prohibiting the issuance of an occupancy permit for a project subject to the developer tax except upon final payment of the entire tax due on the fully completed project is overly restrictive.

(b) In particular, the time required for the Department of Finance to verify the final tax due on large projects can unduly delay the opening and beneficial use of the project or a portion thereof.

(c) It is the purpose of this act to revise the tax and building safety requirements to permit partial occupancy and use of projects subject to the developer tax under appropriate circumstances and with proper safeguards.

PL 11-37 also contained severability and saving clauses as follows:

Section 4. Severability. If any provision of this act or any regulation issued under the authority of this Act should be declared invalid or unenforceable by a court of competent jurisdiction, the judicial determination shall not affect the Act or the regulations as a whole, or any part thereof, other than the particular part declared invalid or unenforceable, and to this extent the provisions of this Act.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.