



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 605, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • Chair • 248-3308
PAULINE ANDERSON • District 1 • 248-5220
GRETCHEN KAFOURY • District 2 • 248-5219
CAROLINE MILLER • District 3 • 248-5217
POLLY CASTERLINE • District 4 • 248-5213
JANE McGARVIN • Clerk • 248-3277

EXECUTIVE SESSION


PRESENT: Commissioner Gladys McCoy, Chair: Commissioner Pauline Anderson; Commissioner Gretchen Kafoury; Commissioner Rick Bauman.
Excused: Commissioner Polly Casterline.

PURPOSE: To review Litigation in Circuit Court filed against the Board by Jim Douglas - Petition to Review Ballot Title certified by Dave Frohnmayer, Attorney General

Laurence Kressel, County Counsel explained that the petition has been filed in Circuit Court, and reviewed the following changes be made to the Ballot title:

1. Change Caption to read . . Transfer [fee] tax . . .
2. Change Question to read . . subject to a [fee] tax . . .
3. Delete the language in the Statement of Purpose referring to an appeal process, and add Every purchaser and seller of real estate subject to tax isd responsible for payment.

Following discussion, Mr. Kressel was authorized to approve #s 1 & 2, but not 3. Mr. Kressel will report the information to the attorney for Mr. Douglas, and report further to the Board as is appropriate.


Asst. Clerk of the Board

1/17/89
0525C.1



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AGENDA OF
MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS
FOR THE WEEK OF
January 16 - 20, 1989

Monday, January 16, 1989 - HOLIDAY - OFFICES CLOSED

Tuesday, January 17, 1989 - 9:30 AM. - Executive Session . Page 2

Tuesday, January 17, 1989 - 9:30 AM - Informal Briefing. . Page 2

Tuesday, January 17, 1989 - 1:30 PM - Informal Meeting . . Page 3

Thursday, January 19, 1989 - 9:30 AM - Formal Meeting. . . Page 4

Tuesday, January 17, 1989 - 9:30 AM

Multnomah County Courthouse, Room 602

✓ EXECUTIVE SESSION - for the purpose of reviewing Pending Litigation
as allowed by ORS 192.660(1)(h) - (approximately 15 minutes)

Immediately following the Executive Session, the following matters
will be heard.

INFORMAL BRIEFINGS

1. Discussion of Impact of the State's decision to discontinue
Court Bailiffs - Sheriff Fred Pearce
2. Response to and discussion of the 1988 Grand Jury Report on
the "condition and management" of Multnomah County's
correctional facilities.
3. Briefing on the first six (6) months of operation of the
Office of Women's Transition Services and future plans -
Joanne Fuller
4. Update on Legislative Matters (If needed) - Fred Neal,
Intergovernmental Relations Officer

*Public Testimony is not taken during Informal Meetings

Tuesday, January 17, 1989 - 1:30 PM
Multnomah County Courthouse, Room 602

INFORMAL

1. Informal Review of Bids and Requests for Proposals:
a) Nuisance abatement
2. Briefing on the Assessment and Taxation Division issues -
Linda Alexander TIME CERTAIN 1:30 PM
3. Informal Review of Formal Agenda of January 19

Thursday, January 19, 1989, 9:30 AM
Multnomah County Courthouse, Room 602
Formal Agenda

REGULAR AGENDA

BOARD OF COUNTY COMMISSIONERS

- R-1 Board Liaison Assignments - Commissioner Gladys McCoy

DEPARTMENT OF HUMAN SERVICES

- R-2 In the matter of ratification of an intergovernmental agreement with the City of Portland for continuing the computer production services for the Aging Services Division client tracking and billing system on the City's VAX computer through June 30, 1989
- R-3 In the matter of ratification of an intergovernmental agreement with Gresham High School whereby the County receives \$10,472 to provide Mental Health Services for Gresham High students - term September 1, 1988 through June 30, 1989

DEPARTMENT OF JUSTICE SERVICES

- R-4 Liquor License applications submitted by Sheriff's Office with recommendation that same be approved as follows:
RENEWALS: RETAIL MALT BEVERAGE: McIntire's Athletic Club, 14513 S.E. Stark; Rustic Inn, 29311 S.E. Stark, Troutdale;
DISPENSER CLASS A: Salty's On The Columbia, 3839 Marine Dr.; PACKAGE STORE: Crown Point Country Market, 31815 E. Crown Point Hwy., Troutdale; RESTAURANT: Chang's Mongolian Grill Restaurant, 1600 N.E. 122nd Ave.
- R-5 Resolution in the Matter of a Policy for Justice Services

ORDINANCES - NONDEPARTMENTAL

- R-6 Second Reading - An Ordinance establishing a recycling program within County Facilities
- R-7 Second Reading - An Ordinance concerning the organization and functions of the Office of County Counsel and repealing MCC 2.30.450(H)

Thursday Meetings of the Multnomah County Board of Commissioners are recorded and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Friday, 6:00 P.M., Channel 27 for Rogers Multnomah East subscribers

Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

0498C.13-17

Attorneys for Petitioners

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

COMMITTEE AGAINST THE REAL
ESTATE SALES TAX and JIM
DOUGLAS,

Petitioners,

v.

THE BOARD OF COMMISSIONERS;
MULTNOMAH COUNTY, OREGON;
PAULINE ANDERSON; GRETCHEN
KAFOURY; RICK BAUMAN; POLLY
CASTERLINE and GLADYS McCOY,

Respondents.

Case No. 89-01-00103

PETITION TO REVIEW BALLOT
TITLE CERTIFIED BY DAVE
FROHNMAYER, ATTORNEY GENERAL

1989 JAN 10 PM 1:02
MULTNOMAH COUNTY
CLERK OF COURT

1.

Petitioner, the Committee Against the Real Estate Sales Tax, is an unincorporated association doing business in the State of Oregon. Petitioner, Jim Douglas, is an elector residing within Multnomah County, Oregon, pursuant to MCC 4.10.540. Petitioners request an order of this Court declaring the ballot title filed by respondents in this matter to be insufficient, unfair and inaccurate, and not in compliance with the requirements of MCC 4.10.530. And, petitioners further request that the Court certify to the county clerk an alternative ballot title to supercede and replace the respondents' title.

2.

On December 27, 1988, the respondents adopted Multnomah County Ordinance No. 605 and referred the proposed measure to the voters of Multnomah County. A copy of the ordinance is attached hereto

Page

PETITION TO REVIEW BALLOT TITLE CERTIFIED BY DAVE FROHNMAYER,
1 - ATTORNEY GENERAL

as Exhibit "1" and incorporated herein.

3.

Multnomah County Ordinance No. 605 was filed with the director of the Multnomah County Division of Elections on December 28, 1988.

4.

The ballot title for the proposed measure reads as follows:

CAPTION

Real Estate Transfer Fee with Revenues
Dedicated to Homeless Housing.

QUESTION

Shall transfer documents in sale of real
property be subject to a fee with revenues
dedicated to homeless housing programs?

STATEMENT OF PURPOSE

Imposes fee on transfer of ownership of
real property in Multnomah County. Fee
is .15% of selling price of property paid
when transfer is recorded. Revenue is
dedicated to housing needs of homeless and
other low income special needs persons.
Exempts certain real property transfers,
including those where sale price is under
\$40,000. Provides for appeal if exemption
is denied. Funds are administered by
Housing Authority of Portland, under a
County approved annual plan.

5.

The ballot title certified by respondents is insufficient, unfair and inaccurate, and does not comply substantially with the requirements of MCC 4.10.530 and other applicable law in the following respects:

A. The proposed ordinance imposes a tax on each transfer of real property located within Multnomah County, yet the ballot title for the measure indicates that a "fee" is imposed. The proposed measure assesses the tax not for providing the service of

transferring title to real estate within Multnomah County, but to raise funds to be deposited in a special fund to attempt to meet "the unmet housing needs of homeless persons and persons with special housing needs . . ." Proposed Ordinance, § 14(a). In Terry v. City of Portland, 204 Or. 478, 269 P.2d 544 (1955), the Court reviewed a city ordinance regulating gambling machines. The Court quoted Cooley, Taxation, 4th ed., § 1784, when it stated

The distinction between a demand of money under the police power and one made under the power to tax is not so much one of form as of substance. . . . If the purpose is regulation, the imposition ordinarily is an exercise of the police power, while if the purpose is revenue, the imposition is an exercise of the taxing power and is a tax. . . . If revenue is the primary purpose and regulation is merely incidental, the imposition is a tax. . . ."

204 Or. at 501. See also Haugen v. Gleason, 226 Or. 99, 359 P.2d 108 (1961). In Haugen, the Court was faced with a Multnomah County planning regulation that exacted a "fee" to be used for land acquisition as a condition of approval of a subdivision. The Court found that the "fee" was really a tax upon subdividers for public purposes. The Court stated that its challenge was to "examine the challenged scheme to determine whether the primary purpose of the county is to accomplish desired public benefits which cost money, or whether the primary purpose is to regulate future subdivisions." 204 Or. at 104. The Court found that the purpose was to raise general monies to accomplish desired public benefits.

The proposed ordinance no. 605 is patterned after ordinance no. 209 from Washington County, Oregon. A copy of the Washington

1 County ordinance is attached hereto as Exhibit "2" and incorporated
2 herein. Washington County correctly calls its ordinance "Real
3 Property Transfer Tax Ordinance."

4 Even though Multnomah County Ordinance No. 605 continuously
5 refers to the tax as a "fee," the mere calling of a tax by another
6 name does not mean that a tax is not being imposed. The purpose
7 of ordinance no. 605 is to raise money for a general government
8 program, not to merely regulate the transfer of title within
9 Multnomah County. To call such a tax a "fee" is deceptive and
10 misleading to the voters of Multnomah County.

11 B. The proposed ballot title filed with ordinance no. 605
12 states in the Question: "Shall transfer documents in sale of real
13 property be subject to a fee . . . ?" Transfer documents are not
14 covered by the tax proposed in this ordinance. It is the sale and
15 other transfer of real estate that is subject to the tax. It is
16 far easier for the voter to understand what he or she is voting on
17 if the question is stated as follows: "Shall sales and other
18 transfers of real estate be subject to a tax with revenues
19 dedicated to homeless housing programs?"

20 C. The statement of purpose of the ballot title, after
21 stating that certain transfers are exempt from the tax, states:
22 "provides for appeal if exemption is denied." It is far less
23 important to state that appeal rights exist than it is to state
24 that every purchaser and seller of real estate subject to the tax
25 in Multnomah County is responsible for payment.

6.

Petitioners propose the following ballot title, which is sufficient, fair and accurate, to replace the ballot title certified by respondents:

CAPTION

Real Estate Transfer Tax with Revenues
Dedicated to Homeless Housing.

QUESTION

Shall sales and other transfers of real estate be subject to a tax with revenues dedicated to homeless housing programs?

STATEMENT OF PURPOSE

Imposes tax on sales and other transfers of ownership of real estate in Multnomah County. Tax is .15% of selling price of property paid when transfer is recorded. Revenue is dedicated to housing needs of homeless and other low income special needs persons. Exempts certain real estate transfers, including those where sale price is \$40,000 or less. Every purchaser and seller of real estate subject to tax is responsible for payment. Funds are administered by Housing Authority of Portland, under a County approved annual plan.

7.

Petitioners respectfully request oral argument on the issues presented by this petition.

8.

Petitioners desire this court to prepare an alternative ballot title to supercede and replace the respondents' title challenged herein.

DATED this 9th day of January, 1989.

Respectfully submitted,

PRESTON, THORGRIMSON, ELLIS
& HOLMAN

By:



Randall B. Bateman, OSB #80157
Paul R. Romain, OSB #73256
Of Attorneys for Petitioners

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

ORDINANCE No. 605

An Ordinance referring, to the voters of Multnomah County, legislation creating a Homeless Housing Fund and imposing a fee on the recording of certain documents transferring real property in Multnomah County.

Multnomah County ordains as follows:

SECTION 1. REFERRAL

Sections 2 through 15 of this ordinance shall be submitted to the voters of Multnomah County at the election of March 28, 1989.

SECTION 2. DEFINITIONS

Definitions: As used in this ordinance, unless the context requires otherwise:

- (A) "Buyer or Purchaser" means any person who is the recipient of a transfer of real property.
- (B) "Date of Tender" means the date of delivering to the Multnomah County Recorder's Office for recording the document transferring, or contracting to transfer, real property.
- (C) "Documents of Transfer" means all deeds, instruments or writings whereby any ownership or title to real property is transferred to or vested in a purchaser or other person at the direction of the purchaser, or contracts to transfer or vest such ownership and/or title in real property.
- (D) "Homeless Housing Fund" means an account to be specially dedicated for specific purposes limited by the conditions of this ordinance.
- (E) "Housing Authority of Portland" means the agency charged with administering programs for very low and low-income persons in the City of Portland and Multnomah County under cooperation agreements and designated as the agency to administer the Homeless Housing Program.
- (F) "Director" means the Director of the Department of General Services or a person designated by the Director to perform functions required by this ordinance.

- (G) "Net Proceeds" means the revenue derived from payment of the fees required under this ordinance, minus the costs of administering and enforcing the ordinance.
- (H) "Person" means individuals, domestic or foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any other legal entity.
- (I) "Real Property" means any estate or interest in real property or contract right thereto, including standing timber (as opposed to contracts for the severance of such timber) and any mobile home affixed to land by permanent plumbing and electrical connections when sold in conjunction with the land upon which it is situated, but excluding leases.
- (J) "Recorder's Office" means the division of Multnomah County government currently known by that name, or any successor to said division.
- (K) "Seller" means any person who is the transferor of an interest in real property.
- (L) "Selling Price" means the consideration, in money or any other thing of value which is paid, delivered or contracted to be paid or delivered in return for the transfer of real property. "Selling price" shall include the amount of cash and the amount of any lien (including tax liens), mortgage, contract, indebtedness or any encumbrance existing against the property, to which the property remains subject and which the purchaser agrees to pay or assume, as stated pursuant to ORS 93.030 [1987 Ed.] on the face of any instrument conveying or contracting to convey fee title to real property. "Selling price" also includes other property or value given or promised for the transfer of real property if such other property or value were either part or whole of the consideration.
- (M) "Transfer of Real Property" means every grant, sale, exchange, assignment, quitclaim, or other conveyance of ownership in or title to real property, including any contract for such sale, exchange, grant, assignment, quitclaim or other conveyance of ownership in or title to real property, excluding leases.

"Transfer of real property" does not include any instrument clearly shown on its face to be any of the following:

- (1) Estoppel deeds;

- (2) deeds in lieu of foreclosure and all transfers of real property effected by order of any court of competent jurisdiction in a mortgage or lien foreclosure proceeding, proceeding for execution of a judgment, proceeding for forfeiture of an interest in real property, bankruptcy proceeding or receivership proceeding;
- (3) vendor's assignments and all transfers or assignments of a seller's interest in a contract for the sale of real property, even though accompanied by a conveyance of the seller's interest in the real property;
- (4) earnest money agreements;
- (5) sheriff's deeds;
- (6) options;
- (7) trustee's deed as a result of foreclosure;
- (8) re-recording of documents;
- (9) fulfillment deeds;
- (10) documents recorded solely for security purposes;
- (11) transfers of real property to effectuate the dissolution of corporation, partnership, or joint venture;
- (12) transfers of real property effected by a deed in lieu of foreclosure to satisfy a mortgage or conveyance to the Federal Housing Administration or Veterans Administration, or their successor agencies;
- (13) a mortgage, trust deed or other transfer of real property merely to secure a debt or an assignment thereof, or in fulfillment of a previously recorded contract for purchase (upon which the transfer fee has already been paid);
- (14) transfers of real property from one spouse to the other in accordance with the terms of a decree of dissolution of marriage or in fulfillment of a property settlement agreement incident thereto;
- (15) transfers of property merely to effectuate a change in identity, form or place of organization where no consideration is contemplated or received from the transfer.

(N) "Very Low Income" means income at or below 25% of area median income.

(O) "County Hearings Official" means a person designated by the County to hear appeals as defined in this ordinance.

SECTION 3. FEE IMPOSED

(A) A fee is hereby imposed on each transfer of real property located within Multnomah County unless such transfer is specifically exempted by Section 4 below. The fee shall be

at the rate of .15 of one percent (fifteen one-hundredth) of the selling price and shall become due and payable upon the date of tender.

- (B) It shall be unlawful for any person to fail to pay all or any portion of the fee imposed by this ordinance.
- (C) It shall be unlawful for any person to fail to state or to misstate the full selling price for any transfer of real property or to make a materially false statement concerning any matter required by this ordinance.

SECTION 4. EXEMPTIONS

The following transactions shall be exempted from the provisions of this ordinance upon satisfactory proof of their applicability :

- (A) Transfers of property made by or to the United States or the State of Oregon, or any other public body, or arising from the foreclosure of real property by any public body.
- (B) Transfers of real property effected by condemnation proceeding. For purposes of this ordinance, a copy of the resolution declaring the necessity for acquiring the property shall be presented to the Director at the time of tender before the exemption may be granted.
- (C) Transfers of real property by gift, devise or inheritance.
- (D) Transfers of a grave or cemetery plot.
- (E) Transfers dated prior to the effective date of this ordinance, or deed given in fulfillment of contracts made prior to the effective of this ordinance.
- (F) Transfers of real property lying partly within and partly without the jurisdictional boundaries of Multnomah County shall be partially exempt as to the selling price attributable to that portion of real property lying outside the jurisdictional boundaries of Multnomah County. The purchaser and seller shall be responsible for calculating the portion of the real property subject to fee on forms provided by the Recorder's Office.
- (G) Transfer of real property for which the selling price is \$40,000 or less.

SECTION 5. EXEMPTION PROCEDURE

- (A) A document that does not clearly show on its face that it is exempt under Section 4 may be deemed to be exempt if an affidavit is filed demonstrating that the document qualifies for exemption under Section 4.
- (B) The Director shall have authority to grant or deny, or grant in part, any exemption allowed by this ordinance, and may require proof of the applicability of any exemption.
- (C) A decision on an exemption shall be in writing and shall be mailed to the applicant. A denial or partial denial of any

exemption shall state the reason(s) therefore and shall advise the applicant of the right to appeal.

- (D) In the event an exemption is denied, the applicant may appeal to the County Hearings Official designated to hear such appeals by filing a written notice of appeal with the Director not later than 10 days following the date the exemption is denied. The Director shall promptly submit to the County Hearings Official an appeal that has been timely filed. The County Hearings Official shall, within 20 days of receipt of an appeal, set a date for hearing the same.
- (E) At the conclusion of the appeal hearing, the County Hearings Official shall issue a written decision, which shall be mailed to the applicant. The decision shall include findings of fact and the reason(s) for the decision.
- (F) Further review shall be to the Circuit Court upon Writ of Review.

SECTION 6. RESPONSIBILITY FOR FEE

- (A) The fee shall be the responsibility of every purchaser and seller of real property located within Multnomah County which is transferred, and any person who, as a party to the transaction, makes, signs or issues any document transferring real property or for whose benefit or use such document is made, issued or transferred; provided however that only one fee shall be imposed upon each transfer of real property.
- (B) Upon presenting for recording any document of transfer, the person presenting the same shall state in the selling price, as defined herein, in terms of a dollar value (including the dollar value of "other valuable consideration," "property of equal value" and similar general statement) in order that the fee due may be computed. Failure to state the complete consideration in terms of a dollar value or to tender complete payment of the same, shall be deemed a violation of this ordinance and shall cause the Recorder's Office to stamp a notation of tax lien upon the document offered for recordation.
- (C) Failure, willful or otherwise, to pay the fee within 10 days of the date of tender, or in the case of an exemption application, within 10 days after the County Hearings Official denies the exemption, shall result in an automatic fee increase in the amount of 50-percent of the assessed fee. Subsequent failure to pay the fee and increase within 60 days of such date of tender or date of exemption denial shall thereafter also result in legal interest accruing on both the fee and increase, all of which shall constitute an immediate additional lien. The interest rate shall accrue

at the rate of one and one-half (1-1/2) percent per month. In no event shall the interest charged be less than \$25.

- (D) The fee shall be a specific lien upon each piece of real property transferred from the date of tender until the fee has been paid. If mistake, error or fraud is discovered subsequent to the payment of or exemption from any fee due under this ordinance, the Director shall be empowered to determine the amount of deficiency in fee payment, and to file a Notice of Lien which shall constitute a lien upon the property from the date of its recordation in the proper County records. Such deficiency shall also constitute a personal debt of the purchaser and seller of the real property transaction giving rise to the transfer fee. Such liens may be foreclosed in the manner prescribed by ORS Chapter 88, ORS Chapter 312 or in any other manner prescribed by law. The County Counsel shall take such action as is appropriate to collect the fee and penalties.

SECTION 7. SATISFACTION OF LIEN

Upon payment of any delinquent fee under this subsection and any automatic increase thereof, the Recorder's Office shall prepare, file and record a Satisfaction of Lien form in the proper County records, which Satisfaction shall serve to remove any lien established by stamped Notice of Lien or subsequent Notice of Lien filed for deficient fee payment under this subsection.

SECTION 8. PAYMENT OF FEE

- (A) The fee shall be paid to the Recorder's Office, or any successor division of County government, prior to recordation of the documents of transfer. The Recorder shall stamp evidence of payment of the fee and any automatic increase thereof, on the documents of transfer and a receipt evidencing payment of the fee shall be issued to the person paying the fee. Refusal to pay the fee shall not result in non-recordation, but a notation of the lien created by the unpaid fee shall be stamped on the documents of transfer and shall remain valid until a satisfaction of lien form is filed.
- (B) When any person fails to pay the fee within the time provided for payment, there shall be a conclusive presumption, for purposes of computation of the fee, that the selling price is not less than the true cash value as defined by ORS 308.205, as determined by the Multnomah County Division of Assessment and Taxation.

SECTION 9. SEVERABILITY

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such

portion shall be deemed severable and shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. RULES AND REGULATIONS

The Director may promulgate rules and regulations necessary for the administration and enforcement of this ordinance, including provision for refund of any fee erroneously paid.

SECTION 11. ADMINISTRATION AND ENFORCEMENT

- (A) The Director shall be responsible for the administration and enforcement of this ordinance.
- (B) In order to carry out the duties imposed by this ordinance, the Director shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require attendance of witnesses to determine compliance with the ordinance, rules and regulations; to require production of relevant documents; to swear witnesses; take testimony of any person by deposition; to impose fines as provided in Section 12; and to maintain a civil action in the name of the county to recover such fines and obtain any orders necessary to enforce this ordinance.
- (C) A party may collect attorney fees if it prevails in a civil action for collection of delinquent fees.

SECTION 12. PENALTIES

In addition to any civil enforcement provided herein, there may be imposed a fine of not more than \$500 for intentional violation of this ordinance. Violation of this ordinance by any officer, director, partner or other natural person having direction or control over any business entity violating this ordinance shall subject each such natural person to such fine.

SECTION 13. USE OF FEE PROCEEDS

- (A) The net proceeds from payment of fees hereunder shall be used exclusively for the purposes established by Section 14 (Homeless Housing Fund) and the plan developed by the Housing Authority of Portland. The Housing Authority of Portland is the only agency authorized to draw from and spend funds collected from this fund, except that the County may use fund proceeds to pay only those legal and administrative expenses incurred as a result of administering and enforcing this ordinance. It shall be

lawful to carry forward from year-to-year any unexpended revenues, so long as their ultimate use is for the purposes specified herein.

- (B) An intergovernmental agreement between Multnomah County and the Housing Authority of Portland shall set forth the procedure by which funds are disbursed to and accounted for by the Housing Authority of Portland.

SECTION 14. ESTABLISHMENT OF HOMELESS HOUSING FUND

- (A) The funds collected from the real estate title transfer fee shall be deposited in a special fund for the sole purpose of funding the unmet housing needs of homeless persons and persons with special housing needs, who have no or very low income, in order to pay maintenance and operating expenses, including rent, and expenses for intensive property management typically associated with buildings housing persons with special needs or particular disabilities. A portion of the funds may be used for housing rehabilitation outside an urban renewal area.
- (B) This fund shall not fund social service program activities or individual client case management. The funds shall not be used to fund existing federally-subsidized public housing or other activities already funded by governmental general fund support. No funds may be expended for housing acquisition.
- (C) The Homeless Housing Program shall give first priority to funding projects to pay rent and other operating expenses and intensive property management which maximize economic feasibility for those new or rehabilitated capital projects which add to the supply of housing for persons of no and very low income. The program shall give second priority to provide gap-financing to those existing projects where funding will prevent tenant displacement or other emergency situations, limited to a one-year contract commitment.

Funds may be used for capital assistance rehabilitation needs up to a maximum of 30% of the total funds.

SECTION 15. ANNUAL HOMELESS HOUSING PLAN

The Housing Authority of Portland shall be required to prepare and submit for County Board approval, in cooperation with housing and social service providers, an annual plan specifying administrative rules, procedures, and criteria to be used to award funding and solicit project applications consistent with this ordinance.

SECTION 16. CERTIFICATION OF BALLOT TITLE

The ballot title for the measure in Sections 2 through 15 shall read:

CAPTION

Real Estate Transfer Fee with Revenues Dedicated to
Homeless Housing.

QUESTION

Shall transfer documents in sale of real property be
subject to a fee with revenues dedicated to homeless
housing programs?

STATEMENT OF PURPOSE

Imposes fee on transfer of ownership of real property
in Multnomah County. Fee is .15% of selling price of
property paid when transfer is recorded. Revenue is
dedicated to housing needs of homeless and other low
income special needs persons. Exempts certain real
property transfers, including those where sale price
is under \$40,000. Provides for appeal if exemption is
denied. Funds are administered by Housing Authority
of Portland, under a County approved annual plan.

SECTION 17. ELECTION

The Director of Elections shall cause the election on the above
measure to be held on March 28, 1989 in accordance with law.

ADOPTED the 27th day of December, 1988, being
the date of its second reading before the Board of County
Commissioners of Multnomah County.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

(SEAL)

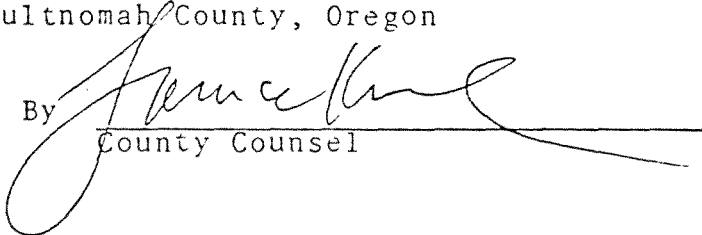
By


Gladys McCoy
County Chair

APPROVED AS TO FORM:

Laurence Kressel, County Counsel
For Multnomah County, Oregon

By


County Counsel

12/20/88: 1

Page 10 - Ordinance No. 605.

EXHIBIT 1
PAGE 10 OF 10

FILED

MAR 30 1984

Washington County
County Clerk

A-ENGROSSED

IN THE BOARD OF COUNTY COMMISSIONERS

FOR WASHINGTON COUNTY, OREGON

ORDINANCE NO. 289

{ An Ordinance Amending the "Real Property
Transfer Tax Ordinance" and Codifying Ordinance
No. 267 as Amended by this Ordinance; Providing
for a Marriage Separation Conveyance Exemption;
Excluding Certain Transactions; Providing for
use of "True Cash Value"; Providing for Civil
Action Attorney Fees; Providing for Interest
on Delinquencies; Providing for Extensions to
Pay and Clarifying Due Date; and Repealing
Ordinance No. 267

The Board of County Commissioners of Washington County, Oregon, ordains:

SECTION 1.

A. Whereas the Board of County Commissioners of Washington County, Oregon, recognizes that the Ordinance known as the "Real Property Transfer Tax Ordinance" as adopted by Ordinance No. 267 is in need of revision; that it will be beneficial to incorporate the provisions of Ordinance No. 267 and the revisions into one document; and does hereby determine the necessity of adopting the revised Real Property Transfer Tax Ordinance.

B. Whereas the Board recognizes that certain revisions in the "Real Property Transfer Tax Ordinance" are needed for a more efficient administration and collection of the tax, and for the general welfare of the citizens of Washington County. Said revisions are described in Section 2.B. below.

C. The Board further takes notice that this Board is in receipt of all matters and information necessary to consider in an adequate manner the necessity of this Ordinance.

SECTION 2.

A. The provisions of Exhibit "A" attached hereto and by this reference

1 incorporated herein and entitled "Real Property Transfer Tax Ordinance" is hereby
2 adopted by this Board as a codification of the provisions of Ordinance No. 267 and
3 the revisions of this Ordinance discussed in subsection B. below, all this pur-
4 suant to the Charter of Washington County. Exhibit "A" attached hereto, may be
5 referred to and plead as the "Real Property Transfer Tax Ordinance".

6 B. The codification of Ordinance No. 267 is contained in Exhibit "A"

7 attached hereto and also depicts the following revisions:

8 1. "Documents transferring real property" expressly no longer includes
9 instruments clearly shown on their face to be the following:

10 a. estoppel deeds;

11 b. deeds in lieu of foreclosure and all transfers of real property

12 ~~affected by order of any court of competent jurisdiction in a mortgage or~~
13 ~~lien foreclosure proceeding, proceeding for execution of a judgment, bank-~~
14 ~~ruptcy proceeding or receivership proceeding;~~

15 c. vendor's assignments and all transfers or assignments of a
16 seller's interest in a contract for the sale of real property, even though
17 accompanied by a conveyance of the seller's interest in the real property;

18 d. earnest money agreements;

19 e. sheriff's deeds;

20 f. options;

21 g. trustee's deed as a result of foreclosure;

22 h. conveyances to or from a governmental entity;

23 i. re-recording of documents;

24 j. fulfillment deeds;

25 k. documents recorded solely for security purposes;

26 l. transfers of real property affected by appropriation or

condemnation proceedings brought by the United States, the State of Oregon, Washington County, or any municipal or non-profit corporation;

m. transfers of real property for which the selling price is \$13,999.00 or less;

n. transfers of real property to effect a mere change in identity, form or place or organization;

o. transfers of real property to effectuate the dissolution of a corporation, partnership or joint venture;

p. transfers of real property by gift, devise or inheritance;

q. transfers of a grave or cemetery lot; or

r. transfers of real property between spouses effected by order of any court of competent jurisdiction in a marriage dissolution or separation proceeding.

2. References to "assessed" value has been changed to "true cash value" as defined by ORS 308.205.

3. A party may collect attorney fees if it prevails in a civil court action for collection of delinquent taxes.

4. Interest shall accrue on delinquent taxes at the rate of 1-1/2% per month from the due date until paid. In no case, however, shall the penalty be less than \$50.00.

5. Allows parties to file up to two extensions for payment. Each extension to be for 15 (fifteen) days.

6. Clarifies that the time to pay the tax is within 15 (fifteen) days of the date of recording of the document.

SECTION 3.

Ordinance No. 267 is hereby repealed on the effective date of this Ordinance.

1 ENACTED this third day of April, 1984, being the date of the
2 fourth reading and second public hearing before the Board of County Commissioners
3 of Washington County, Oregon.

4 BOARD OF COUNTY COMMISSIONERS
5 FOR WASHINGTON COUNTY, OREGON

6 Wm M. McLean
7 CHAIRMAN

8 Barbara A. Gutzinger
9 RECORDING SECRETARY

	<u>READING</u>	<u>PUBLIC HEARING</u>
11 FIRST	<u>March 13, 1984</u>	<u></u>
12 SECOND	<u>March 20, 1984</u>	<u></u>
13 THIRD	<u>March 27, 1984</u>	FIRST <u>March 27, 1984</u>
14 FOURTH OTHER	<u>April 3, 1984 (A-Engrossed)</u>	SECOND <u>April 3, 1984</u>
15 VOTE Aye	<u>McLennanbeck, Hays, Killpack, Warren</u>	
16 Nay	<u></u>	
17 Absent	<u>Meek</u>	
18 RECORDING SECRETARY:	<u>Barbara A. Gutzinger</u>	
19 DATE:	<u>April 3, 1984</u>	

1 REAL PROPERTY TRANSFER TAX ORDINANCE

2 SECTION 1. SHORT TITLE

3 This Ordinance shall be known as the "Real Property Transfer Tax Ordinance"
4 and may be so pleaded.

5 SECTION 2. CONSTRUCTION

6 The Real Property Transfer Tax Ordinance and all amendments hereinafter
7 made thereto shall be referred to herein as "this ordinance". The singular number
8 includes the plural, the masculine gender includes the feminine and the neuter
9 and the word "shall" is mandatory, not directory.

10 SECTION 3. DEFINITIONS

11 As used in this Ordinance unless the context requires otherwise:

12 1. "BOARD" means the Board of County Commissioners for Washington County,
13 Oregon.

14 2. "DIRECTOR" means the Director of Assessment and Taxation of Washington
15 County, Oregon, and his designated representative.

16 3. "PERSON" means and includes individuals, domestic and foreign corpora-
17 tions, societies, joint ventures, associations, firms, partnerships, joint stock
18 companies, clubs or any legal entity whatsoever.

19 4. "REAL PROPERTY" means and includes any estate or interest in real
20 property and any contract right thereto, and includes standing timber.

21 5. "TRANSFER OF REAL PROPERTY" means and includes every grant, sale,
22 exchange, assignment, quitclaim or other conveyance of property in or title
23 to real property, and also means and includes any contract, for such sale,
24 exchange, grant, assignment, quitclaim or other conveyance of ownership in or
25 title to real property. Notwithstanding this, "transfer of real property" does
26 not include instruments clearly shown on their face to be the following:

1 a. estoppel deeds;

2 b. deeds in lieu of foreclosure and all transfers of real property
3 effected by order of any court of competent jurisdiction in a mortgage or
4 lien foreclosure proceeding, proceeding for execution of a judgment, bank-
5 ruptcy proceeding or receivership proceeding;

6 c. vendor's assignments and all transfers or assignments of a
7 seller's interest in a contract for the sale of real property, even though
8 accompanied by a conveyance of the seller's interest in the real property;

9 d. earnest money agreements;

10 e. sheriff's deeds;

11 f. options;

12 g. trustee's deed as a result of foreclosure;

13 h. conveyances to or from a governmental entity;

14 i. re-recording of documents;

15 j. fulfillment deeds;

16 k. documents recorded solely for security purposes;

17 l. transfers of real property affected by appropriation or con-
18 demnation proceedings brought by the United States, the State of Oregon,
19 Washington County, or any municipal or non-profit corporation;

20 m. transfers of real property for which the selling price is
21 \$13,999.00 or less;

22 n. transfers of real property to effect a mere change in
23 identity, form or place or organization;

24 o. transfers of real property to effectuate the dissolution of
25 a corporation, partnership or joint venture;

26 p. transfers of real property by gift, devise or inheritance;

1 q. transfers of a grave or cemetery lot; or

2 r. transfers of real property between spouses effected by order
3 of any court of competent jurisdiction in a marriage dissolution or
4 separation proceeding.

5 6. "PURCHASER" means any person who is the transferee of ownership or
6 interest in real property.

7 7. "SELLER" means any person who is the transferor of ownership of interest
8 in real property.

9 8. "SELLING PRICE" means the consideration, in money or any other thing of
10 value which is paid, delivered, or contracted to be paid or delivered, in return
11 for the transfer of real property. "Selling price" shall include the amount of
12 cash and the amount of any lien, mortgage, contract, indebtedness or any encum-
13 brance existing against the property to which the property remains subject and
14 which the purchaser agrees to pay or assume, as stated pursuant to ORS 93.030
15 on the face of any instrument conveying or contracting to convey fee title to
16 real property. However, "selling price" also includes other property or value
17 given or promised for the transfer of real property if such other property or
18 value were either part or the whole consideration.

19 9. "DOCUMENTS TRANSFERRING REAL PROPERTY" means and includes all deeds,
20 instruments or writings whereby any ownership or title to real property is trans-
21 ferred to or vested in a purchaser or other person at the direction of the pur-
22 chaser or contracts to transfer or vest such ownership or title in real property.

23 10. "DATE OF TENDER" means the date of delivering to the Director for
24 recording the document transferring, or contracting to transfer, real property.

25 SECTION 4. TAX IMPOSED

26 A. A tax is hereby imposed on each transfer of real property located

1 within Washington County. The tax shall be at the rate of \$1.00 per \$1,000
2 or fraction thereof of the selling price and shall become due and payable within
3 fifteen (15) days of the date of tender to the Director of recording of the
4 documents transferring real property. Liability for this tax shall attach upon
5 every purchaser and seller of the real property located within Washington
6 County which is transferred, and to any person who, as a party thereto, makes,
7 signs or issues any document transferring real property or for whose benefit or
8 use such document is made, issued or transferred, provided, however, that only one
9 tax shall be imposed upon each transfer of real property.

10 B. A party may in writing to the Director request a fifteen (15) day exten-
11 sion in which to pay the tax. The Director may approve no more than two (2)
12 extensions.

13 C. It shall be unlawful for any person to fail to pay all or any portion
14 of the tax imposed by this Ordinance.

15 D. It shall be unlawful for any person to fail to state or to misstate the
16 full selling price for any transfer of real property. When any person fails to
17 pay the tax or apply for an exemption, as provided for in Section 5.A. herein,
18 within the time provided for payment of the tax, there shall be a conclusive
19 presumption, for purposes of computation of the tax, that the selling price is
20 not less than the true cash value as defined by ORS 308.205, as determined by
21 the Washington County Department of Assessment and Taxation.

22 E. In addition to any other fine or penalty provided by this Ordinance,
23 failure to pay the tax or apply for an exemption, as provided for in Section 5.A.
24 herein, within fifteen (15) days of the date of tender to the Director for recording
25 of the documents transferring real property shall result in a penalty equal to
26 the amount of tax owed or fifty dollars (\$50.00), whichever is greater.

1 Additionally, interest shall accrue on the delinquent tax at the rate of 1-1/2%
2 per month from the due date until the date paid.

3 SECTION 5. EXEMPTIONS FROM THIS ORDINANCE

4 A. document that does not clearly show on its face that it is one listed in
5 paragraph 5 of Section 3, may be deemed not to be a "Transfer of Real Property"
6 if an affidavit is filed demonstrating that the instrument in fact is one so listed.
7 The affidavit shall be filed with the Director within fifteen (15) days of tender
8 of the document for recording. Extensions may be obtained as provided in Section 4B.
9 for payments.

10 SECTION 6. COLLECTION AND PAYMENT OF TAXES IMPOSED BY THIS ORDINANCE

11 A. The tax imposed by this Ordinance shall be paid to the Director, who shall
12 note the date of such payment, the identity of all parties participating in the trans-
13 fer of the real property and such other information as he may require to identify the
14 transaction. The Director shall issue a receipt showing payment of the tax imposed
15 by this Ordinance and shall take all actions necessary to stamp, mark or otherwise
16 identify documents and transactions subject to this Ordinance.

17 B. It shall be unlawful for any person to record, or tender for recording with
18 the Director any documents transferring real property unless the payment of the tax
19 imposed by this Ordinance has been provided as stated in Section 4 of this Ordinance.

20 C. The monies collected pursuant to this Ordinance shall be reported to and
21 transmitted monthly to the Director of Support Services of Washington County,
22 Oregon.

23 SECTION 7. RULES AND REGULATIONS

24 Upon the recommendation of the Director, or upon its own motion, the Board
25 may promulgate rules and regulations necessary for the administration and enforce-
26 ment of this Ordinance.

1 SECTION 8. ADMINISTRATION AND ENFORCEMENT

2 A. The Director shall be responsible for the administration and enforcement
3 of this Ordinance.

4 B. In order to carry out the duties imposed by this Ordinance, the Director
5 shall have the authority to do the following acts, which enumeration shall not be
6 deemed to be exhaustive, namely: administer oaths; certify to all official acts;
7 to subpoena and require attendance of witnesses at Board meetings or other
8 hearings to determine compliance with the Ordinance, rules and regulations; to
9 require production of relevant documents at public hearings; to swear witnesses;
10 and take testimony of any person by deposition.

11 SECTION 9. ENFORCEMENT OF TAX BY CIVIL ACTION

12 The tax and any penalty imposed by this Ordinance constitutes a debt of the
13 person liable for the tax as set forth in Section 4.A. of this Ordinance and may
14 be collected by the Director in an action at law. If litigation is necessary to
15 collect the tax and any penalty, the prevailing party shall be entitled to reason-
16 able attorney fees at trial or on appeal.

17 SECTION 10. REVIEW

18 Review of any action of the Director and the Board taken pursuant to this
19 Ordinance, or the rules and regulations adopted pursuant thereto, shall be taken
20 solely and exclusively by Writ of Review in the manner set forth in ORS 34.010
21 through 34.100, provided, however, that any aggrieved person may demand such
22 relief by Writ of Review.

23 SECTION 11. SEPARABILITY

24 If any section, subsection, sentence, clause, phrase or portion of this
25 Ordinance is, for any reason held invalid or unconstitutional by a court of
26 competent jurisdiction, such portion shall be deemed a separate, distinct, and

1 independent provision, and such holding shall not affect the validity of the
2 remaining portions of this Ordinance.

3 SECTION 12. PENALTIES

4 A. In addition to any other civil enforcement provided herein, violation
5 of this Ordinance shall be a misdemeanor and shall be punishable, upon conviction,
6 by a fine of not more than \$500.00.

7 B. Violation of this Ordinance by any officer, director, partner or other
8 person having direction or control over any person violating this Ordinance shall
9 subject each such person to such fine.

Board

as Exhibit "1" and incorporated herein.

3.

Multnomah County Ordinance No. 605 was filed with the director of the Multnomah County Division of Elections on December 28, 1988.

4.

The ballot title for the proposed measure reads as follows:

CAPTION

Real Estate Transfer Fee with Revenues Dedicated to Homeless Housing.

QUESTION

Shall transfer documents in sale of real property be subject to a fee with revenues dedicated to homeless housing programs?

STATEMENT OF PURPOSE

Imposes fee on transfer of ownership of real property in Multnomah County. Fee is .15% of selling price of property paid when transfer is recorded. Revenue is dedicated to housing needs of homeless and other low income special needs persons. Exempts certain real property transfers, including those where sale price is under \$40,000. Provides for appeal if exemption is denied. Funds are administered by Housing Authority of Portland, under a County approved annual plan.

5.

The ballot title certified by respondents is insufficient, unfair and inaccurate, and does not comply substantially with the requirements of MCC 4.10.530 and other applicable law in the following respects:

A. The proposed ordinance imposes a tax on each transfer of real property located within Multnomah County, yet the ballot title for the measure indicates that a "fee" is imposed. The proposed measure assesses the tax not for providing the service of

Page

PETITION TO REVIEW BALLOT TITLE CERTIFIED BY DAVE FROHNMAYER,
2 - ATTORNEY GENERAL

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6.

Petitioners propose the following ballot title, which is sufficient, fair and accurate, to replace the ballot title certified by respondents:

CAPTION

Real Estate Transfer Tax with Revenues Dedicated to Homeless Housing.

QUESTION

OK { Shall sales and other transfers of real estate be subject to a tax with revenues dedicated to homeless housing programs?

STATEMENT OF PURPOSE

Imposes tax on sales and other transfers of ownership of real estate in Multnomah County. Tax is .15% of selling price of property paid when transfer is recorded. Revenue is dedicated to housing needs of homeless and other low income special needs persons. Exempts certain real estate transfers, including those where sale price is \$40,000 or less. *Every purchaser and seller of real estate subject to tax is responsible for payment. Funds are administered by Housing Authority of Portland, under a County approved annual plan.

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BVP
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7.

Petitioners respectfully request oral argument on the issues presented by this petition.