

BILL NO. 19-21

AN ORDINANCE AMENDING SECTIONS 28-175, 28-176, 28-177, 28-179 AND 28-181 OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT GOVERNING THE LICENSE TAX ON BUILDING CONTRACTORS BY DELETING OUTDATED OR EXPIRED CONTENT AND CLARIFY APPLICABLE USE OF THE I.T.E. TRIP GENERATION MANUAL FOR TRAFFIC GENERATION CALCULATIONS BASED ON LAND USE CATEGORIES.

WHEREAS, Section 28-179 of the City's Code contains the methodology of the calculation of the license tax imposed by the City of Lee's Summit, Missouri ("City") upon building contractors; and,

WHEREAS, the License Tax Review Committee met November 29, 2018 and prepared recommendations regarding the license tax imposed on building contractors (the "License Tax"); and,

WHEREAS, The License Tax Review Committee recommended the following: (1) delete outdated or expired sections to keep the Code current, and (2) calculate the trip generation based on the greater of available and applicable unit of measure in the trip generation manual; and,

WHEREAS, the City wishes to amend sections 28-175, 28-176, 28-177 and 28-181 as recommended by the unanimous vote of the License Tax Committee; and,

WHEREAS, the City Council supports the License Tax Review Committee's recommendations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the City Council of the City of Lee's Summit hereby declares its support of the recommendations of the License Tax Review Committee set forth herein.

SECTION 2. That Section 28-178, entitled "Purpose and Intent" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-175. - Purpose and intent.

- A. It is the intent of this division to impose an excise tax to be paid by development that generates new traffic in the City in the form of a license tax on building contractors for the purpose of raising revenue, the proceeds of which shall be used for streets and related improvements throughout the City, including but not limited to the design, construction, reconstruction, repair and maintenance of streets, roads and bridges and related improvements in the City and the acquisition of all necessary rights-of-way therefor, which tax is to be imposed on the basis of the additional vehicle trips generated by any development activity requiring a building permit and resulting in additional vehicle trips as calculated during the afternoon time period (p.m. peak hour) when traffic volume on the adjacent streets is highest.

BILL NO. 19-21

- B. It is the intent of this division to establish an administrative review and appeal procedure to ensure that the license tax is assessed and collected in accordance with this division and all applicable laws.
- C. It is not the intent of the City to impose a fee or other exaction pursuant to the general police powers of the City or to regulate construction, growth, or development within the City.
- D. It is the intent that the license tax imposed upon building contractors through this division is a surcharge that is in addition to the annual business license tax paid by building contractors pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances. It is the intent that the license tax to be paid by a building contractor shall be the annual business license tax imposed pursuant to Chapter 28, Article II, Division 1 of the Code of Ordinances, plus the license tax imposed pursuant to this division.

SECTION 3. That Section 28-176, entitled "Definitions" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-176. - Definitions.

As used in this division:

Area of building means the total floor area of a building measured by square feet.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building contractor means a person that builds a building.

Building permit means the permit required for new construction and additions pursuant to Sections 7-27 and 7-28 of the Lee's Summit City Code of Ordinances, as amended.

City Manager means the City Manager or his designee.

Developer means a person who engages in development.

Development means any man-made change or change of use to improved or unimproved land, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations.

Dwelling unit means one (1) or more rooms constituting all or part of a building and that are arranged, designed, or used exclusively as a single housekeeping unit for one (1) family, and that may include cooking, living, sanitation, and sleeping facilities.

License tax means the tax imposed upon a building contractor pursuant to this division.

License Tax Administrator means the Director of Finance or his designee.

BILL NO. 19-21

Non-residential means created or used for any purpose other than residential uses or purposes.

Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

P.M. peak hour means the hour between 4:00 p.m. and 6:00 p.m. during the weekdays, Monday through and including Friday, at which the average traffic volume is highest.

Public body means agencies of the Federal or State government, or political subdivisions of the State.

Residential means primarily created or used for a dwelling for one or more persons.

School district means a public school district of the State of Missouri.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner for either residential or non-residential purposes.

Vehicle trip means a single or one-direction vehicle movement with either the origin or the destination (exiting or entering) at the subject building. For trip generation purposes, the total trip ends for a building over a given period of time are the total of all trips entering plus all the trips exiting a site during a designated time period.

SECTION 4. That Section 28-177, entitled "Applicability" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-177. - Applicability.

- A. This division shall be applicable to development requiring a building permit and resulting in additional vehicle trips. Additional vehicle trips shall be calculated during the afternoon time period (p.m. peak hour) when traffic volume on adjacent streets is highest. As used in this section, additional vehicle trips shall mean vehicle trips that add to the total traffic volume on the street network as a result of the new development.
- B. Credits. Any credit granted under this division shall reduce the total license tax owed by a building contractor.
 1. Upon submission of a proper application therefore, the following persons shall be granted a full credit in the amount of the license tax imposed pursuant to this division by the License Tax Administrator:
 - a. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a public body for its governmental use;

BILL NO. 19-21

- b. Development requiring a building permit and resulting in additional vehicle trips constructed by, or by a building contractor on behalf of, a school district of the State;
 - c. Rebuilding of an involuntarily damaged or destroyed building, provided that such rebuilding does not result in additional vehicle trips;
 - e. Development requiring a building permit and resulting in additional vehicle trips that is constructed by, or by a building contractor on behalf of, a person that is not subject to any Federal, State or local taxes, including Federal, State and local sales, income, personal property, real property, use, earnings, excise or license taxes. The burden of proof shall be on the building contractor claiming this credit to demonstrate to the License Tax Administrator, by clear and convincing evidence, that the development being constructed by, or by a building contractor on behalf of, a person claiming such credit is exempt from all Federal, State and local taxes as described in this subsection;
2. Upon submission of a proper application therefore, the following persons shall be granted a partial credit from the license tax imposed pursuant to this division by the License Tax Administrator:
- a. A building contractor that requests a building permit that is required for a change of existing uses within an existing building, except that a change of use from a residential use to a non-residential use shall be granted a credit only for the number of trips that were generated by the building during the p.m. peak time period prior to the change in use;
 - b. A building contractor that requests a building permit that results in the redevelopment of property, provided that a complete application for a building permit to construct a building to replace the existing building is filed within six (6) months following demolition of the existing building, or within a longer period of time as approved by the License Tax Administrator or the City Manager. As used in this Subsection, redevelopment means the demolition of one (1) or more buildings and the subsequent construction of one (1) or more new buildings on the property. The credit shall be granted only for the number of trips that were generated by the previous building during the p.m. peak time period.
3. In the event that the building is transferred to a person that would not be eligible for a credit hereunder, within a period of one (1) year from the date of the issuance of the building permit, the transferee shall be required to pay the tax imposed by this division.

SECTION 5. That Section 28-179, entitled "Calculation of the License Tax" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-179. - Calculation of the license tax.

A. The City shall calculate the license tax as follows:

BILL NO. 19-21

1. The Council shall by ordinance establish the license tax imposed upon a building contractor that shall be calculated by multiplying the trip generation rate by the license tax rate.
2. Trip generation rate. The trip generation rate is a measurement of the number of trips to and from a building for which a building permit application is submitted.
 - a. The License Tax Administrator shall determine the trip generation rate for residential property by multiplying the number of dwelling units by the trip generation rate specified for the specific type of land use category.
 - b. The License Tax Administrator shall determine the trip generation rate for non-residential property by dividing the total floor area of the building, measured in square feet, by one thousand (1,000), and then multiplying that number by the trip generation rate specified for the specific type of land use category. In the absence of building area unit of measure for the proposed use of the development, or the structure on site does not match the proposed primary use of the site, the most applicable measure of trip generation from the *ITE Trip Generation Manual* shall be used.
3. License tax rate. The license tax rate is a measurement of the rate of tax to be paid by building contractors according to land use classifications.

B. Tax rates by land use category.

Land Use Category	Tax Rate
Residential	\$1,088.00 per new trip
Manufacturing/industrial	\$ 1,000.00 per new trip
Commercial	\$ 750.00 per new trip

SECTION 6. That Section 28-181, entitled "Appeals" of the Code of Ordinances of the City of Lee's Summit shall be amended as shown on Exhibit A so that said section shall read as follows:

Sec. 28-181. - Appeals.

A. *Appeal to the City Manager.*

1. A building contractor or developer (hereinafter "appellant") may appeal the assessment of a license tax to the City Manager by filing a notice of appeal with the City Manager within thirty (30) days following the assessment of the license tax by the License Tax Administrator. If an appellant fails to appeal the assessment of the license tax within thirty (30) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard. If the appellant pays the license tax without protest, the appellant waives the right to appeal the assessment of the license tax.

BILL NO. 19-21

2. If the license tax is due and payable under the terms of Section 28-178, and an appellant desires to process a building permit application or any certificate of occupancy during the appeal process, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the License Tax Administrator shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.
 3. An appellant may appeal to the City Manager the following decisions:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development;
 - c. Any credit determination pursuant to Section 28-177.B.
 4. Within ten (10) days of receipt of the notice of appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the City Manager copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the License Tax Administrator's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the City Manager a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the City Manager proof that it is eligible for a credit and the extent of the credit.
 5. The Notice of Appeal filed with the City Manager shall specify the grounds for the review. The City Manager shall consider the appeal. The appellant maintains the burden of proof to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
 6. Within thirty (30) days after filing of the notice of appeal, the City Manager shall render a final decision in writing to the appellant regarding assessment, calculation and collection of the license tax.
- B. *Appeal to the Council.*
1. An appeal under this subsection may be heard only if the appellant has received a final decision from the City Manager pursuant to Section 28-181.A.6.
 2. If the license tax is due and payable under the terms of Section 78 and an appellant desires to process a building permit application or any certificate of occupancy after appeal is taken from the final decision of the City Manager, the building contractor is required to pay the license tax under protest. If the license tax is paid under protest by the building contractor, an appeal from a final decision of the City Manager shall not delay processing of the building permit and shall not delay any other permit, license or approval issued by the City.

BILL NO. 19-21

3. An appellant may appeal the final decision of the City Manager by filing a Notice of Appeal with the City Clerk within fifteen (15) days following issuance of the final written decision of the City Manager as specified in Section 28-181.A.6. If an appellant fails to appeal the final decision of the City Manager within fifteen (15) days as set forth in this subsection, the assessment of the license tax shall be final and no appeal shall be heard.
 4. An appellant may appeal the following decisions of the City Manager to the Council:
 - a. The land use classification of the development;
 - b. The number of trips generated by the proposed development; or
 - c. Any credit determination pursuant to Section 28-177.B.
 5. Within thirty (30) days of receipt of the Notice of Appeal, or by such date as shall be agreed upon in writing between the appellant and the City, the appellant shall submit to the Public Works Committee copies of all studies, calculations and other documentation appropriate to the determination of the license tax. If a specified basis for the appeal is to challenge the City Manager's determination of the number of trips generated by the proposed development, the appellant may be required to submit to the Public Works Committee a traffic study prepared by a certified traffic engineer or traffic engineering firm, paid for by the appellant, which sets forth the appellant's proposed trip generation calculations for the development. If the basis for the appeal is a credit determination pursuant to Section 28-177.B., the appellant must submit to the Public Works Committee proof that it is eligible for a credit and the extent of the credit.
 6. The Notice of Appeal shall specify the grounds for the appeal, and no argument shall be heard by the Public Works committee that is not set forth in the Notice of Appeal. The Notice of Appeal shall be forwarded to the Public Works Committee along with a recommendation from City staff and the Public Works Committee shall conduct a hearing and submit written recommendations to the Council for consideration by the Council on the appeal, but such recommendations shall be advisory and not be binding upon the Council. The appellant shall receive notice of the hearing by certified mail at least fifteen (15) days prior to the hearing. The burden of proof shall be on the appellant to demonstrate by clear and convincing evidence that:
 - a. The land use classification of the development is incorrect;
 - b. The number of trips generated by the development, as calculated by the License Tax Administrator, does not reflect the actual number of trips created by the development; or
 - c. The credit determination under Section 28-177.B. is incorrect.
 7. Within thirty (30) days after the Council's final decision, the party that submitted the Notice of Appeal shall receive written notice of the decision.
- C. *Calculation of days.* The number of days specified in Section 28-181 shall include weekend days and holidays. The last day of the period shall be included in the computation, unless it is a Saturday, Sunday or a legal holiday, and if it is, the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. A half-holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the Congress of the United States, Missouri legislature or the Council.

BILL NO. 19-21

SECTION 7. That this Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2019.

ATTEST:

Mayor *William A. Baird*

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2019.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief of Planning and Infrastructure
Nancy K. Yendes