

## **Ordinance No. 2415 Summary**

On April 18, 2017, the City of De Soto, Kansas, adopted Ordinance No. 2415, amending the City Code to permit payment of the excise tax, upon the act of platting and building within the city, to be paid at the time of obtaining a building permit instead of at the time of filing a final plat. Because the excise tax was originally adopted via a Charter Ordinance, Ordinance No. 2415 is subject to a 60-day protest petition before becoming effective.

A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84<sup>th</sup> Street, De Soto, Kansas or at [www.desotoks.us](http://www.desotoks.us). This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

## **ORDINANCE NO. 2415**

### **AN ORDINANCE AMENDING ARTICLE 6 OF CHAPTER XVI OF THE CITY CODE REGARDING EXCISE TAXES ON PLATTING AND BUILDING IN THE CITY OF DE SOTO, KANSAS**

WHEREAS, pursuant to Article 6 of Chapter XVI of the City Code, the Governing Body is required to periodically review the excise tax rate, policies, and procedures at such time as it deems necessary or appropriate; and

WHEREAS, City Staff believes it is appropriate that the excise tax -- currently due and payable upon platting -- may, alternatively, be paid in connection with obtaining a building permit.

**NOW THEREFORE**, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

**Section 1.** That Article 6 of Chapter XVI of the City Code is amended to read as follows:

### **ARTICLE 6. EXCISE TAX ON PLATTING AND BUILDING**

#### **16-601. Purpose and authority.**

The excise tax levied by this article on the act of platting real property and building in the city has for its purpose the raising of general revenues to be used for transportation improvements in the city. The city's authority to levy this excise tax is derived from Charter Ordinance No. 12, Article 12, Section 5(b) of the Kansas Constitution, and K.S.A. § 12-137 and 12-138.

(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

**16-602. Levy and payment of tax.**

(a) A tax is hereby levied on the act of platting real property or building in the city by any person, firm, partnership, joint venture, corporation, school district or other governmental entity, unless otherwise exempt by law. The tax rate shall be \$0.19 per square foot of land that is the subject of the plat or building permit.

(b) Subject to the delay in payment provided for by subsections (d) and (g) of this Section 16-602, every applicant platting property shall pay to the city, after governing body approval but prior to execution by the mayor and prior to recordation of an approved plat with the register of deeds, a tax equal to the area of the real property (square footage) included in the plat multiplied by the current tax rate, less any applicable credits. Every applicant for a building permit shall pay to the city a tax equal to the area of the real property (square footage) which is the subject of the building permit multiplied by the current tax rate, less any applicable credits. The area of real property shall be finally determined by city staff. If multiple plats shall be filed in phases, the fee shall be due prior to each individual plat being recorded. No building permit shall be issued until the excise tax has been paid to the city for the lot in question.

(c) Regardless of the multiplied tax total, no single-family residential lot or building permit shall be obligated to pay more than \$10,000.

(d) No approved plat subject to this tax shall be recorded until the applicant has paid the tax in full, or, alternatively, the applicant has signed an acknowledgement with the city indicating the excise tax for said plat will be paid as each lot within the plat is built upon, and such payment per lot will be a precondition to receiving a building permit for the particular lot.

(e) No building permit subject to this tax shall be issued until the applicant has paid the tax in full.

(f) All taxes collected shall be deposited in the city's Capital Improvements Fund.

(g) Any applicant platting property may delay the payment of excise tax due upon the act of platting by signing an acknowledgement of the following:

- i. The excise tax due for each buildable lot contained within the plat, as calculated by city staff, is correct; and
- ii. The excise tax due for each lot will be paid as a precondition to issuance of a building permit for the lot to be built upon; and
- iii. The city may record a notification to any future purchasers of the property that is the subject of the plat involved, said recording to notify future purchasers of the excise tax obligation, and be approved by the city attorney.

(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

### **16-603. Pledge of revenues.**

All revenues received from the tax are hereby pledged to transportation improvements of the city.  
(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

### **16-604. Credits/exemptions.**

The excise tax paid on a final plat or building permit pursuant to this article shall be exempted or credited by city staff in accordance with the following:

(a) Subject to Subsection (c) of Section 16-602 and Subsection (i) of Section 16-604, an exemption shall be granted for a structure that was previously assessed excise tax by the City.

(b) Any replat of platted land which does not increase the gross area of the property being replatted except for single-family development in which the previous plat was granted pursuant to the residential cap in subsection (c) of Section 16-602 above. In such cases, the applicant will pay for the square footage of the land that is the subject of the replat which does not include the land which contains the original homestead land. In the case of non-platted land or lot splits, that portion of land split from the original homestead tract or lot shall be charged at the rate of the square footage times the tax rate, which rate will be equal to the rate in effect at the time that a building permit for the building to be built on the land is issued.

(c) Land permanently dedicated on a final plat to the city or other public, governmental body, or acts of platting or building by the City of De Soto, Kansas, shall be exempt from excise tax.

(d) Credit shall be given for developer construction of all or a portion of a collector or arterial road project that, according to a finding by the city governing body, is substantially similar in kind and scope to a project specifically detailed in the City's Capital Improvements Plan. Such credit will not be given for minimum infrastructure improvements required of the developer by the city planning commission. Formation of a benefit district may be used for developer construction of a project meeting the definition described in this subsection (d). Application for a credit/exemption pursuant to this subsection (d) shall be waived unless made to, and approved by, the city governing body prior to the city planning commission's consideration of the applicant's final plat.

(e) Land dedicated for public right of way for arterial and collector roads shall be exempt from excise tax.

(f) No excise tax shall be required for platting land or obtaining a building permit for a structure located, or to be located, within the legal description of the city's "Neighborhood Revitalization Area", as depicted in the city's Neighborhood Revitalization Program and commonly referred to as the "R-H" Residential – Historic "Old Town" District.

(g) No excise tax shall be required for an existing structure being included in a plat so long as such existing structure does not change in use or impact.

(h) No excise tax shall be required for a building permit for replacement, remodeling or expansion of an existing single family structure, or for an accessory structure located on property with a single family structure.

(i) No excise tax shall be required for remodeling of a non-single family structure, or the building of a non-single family structure to replace an existing non-single family structure, but such remodeling or replacement structure must be contained in the same general footprint of the existing structure and such remodeling or replacement structure shall not increase the usable square footage of the existing structure as determined by city staff. If the remodeled, replacement, or expanded structure increases the usable square footage of the existing structure, excise tax shall be assessed on a pro rata basis in accordance with the following formula:

$$\text{Excise Tax Due} = (\text{Tax Rate}) \times (\text{usable square footage of real property}) \times (\text{increase in usable square footage} / \text{usable square footage of existing structure})$$

Validation of usable square footage may be determined from information submitted by the person or entity seeking the exemption or from applicable county records. If further validation of usable square footage is deemed necessary by city staff, the exemption may be conditioned on an interior inspection of the existing and replacement or remodeled structures. In the case of a structure being replaced, this exemption shall not apply if there is a passage of time of more than one year between the destruction of the structure being replaced and the issuance of an occupancy permit for the replacement structure.

(j) For non-residential construction, no excise tax shall be assessed for any portion of a plat or lot that will remain vacant, and not part of the improvements associated with the issuance of a building permit. This exemption shall not include any areas devoted to off-street parking, operational yards or outside storage areas, landscape buffering, set-backs, or other similar components that are required by applicable regulations to accompany a non-residential development.

(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

#### **16-605. Review.**

The governing body shall periodically review the excise tax rate, policies, and procedures at such time as it deems necessary or appropriate.

(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

#### **16-606. Appeals.**

Any person aggrieved by any decision of the city officer administering the provisions of this code may appeal such decision to the city governing body. The appeal must be filed in writing with the city clerk within 30 days of the final decision by city staff as to the applicability or amount of the excise tax to be applied. The governing body shall have the power to hear and decide appeals where it is alleged that there is an error in the interpretation, application, or calculation by the city officer enforcing the provisions of this excise code. The filing of an appeal or other legal challenge with a court of competent jurisdiction shall not stay the imposition, calculation, or collection of the excise tax unless a bond, letter of credit or other approved and sufficient surety is received and approved by the governing body.

(Ord. 1052; Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

## **16-607. Interpretation.**

This Article shall be construed as follows:

(a) **Liberal Construction:** The provisions of this Article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, and welfare of the City and its citizens.

(b) **Conflict:** In the event of any conflict between other City ordinances and this Article, the provisions of this Article shall be deemed to be controlling, provided, however, that unless expressly provided herein, this Article is not intended to amend or repeal any existing City ordinance or regulation which shall continue in full force and effect.

(c) **Invalidity:** If any section, subsection, sentence, clause, phrase, or portion of this Article is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion of this Article shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of this Article nor impair or nullify the remainder of this Article which shall continue in full force and effect. If the application of any provision of this Article to any person, firm, partnership, joint venture, corporation, school district or other governmental entity, is declared to be invalid by a court of competent jurisdiction, the intent of the City is that such decision be limited to that particular circumstance immediately involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Article as a whole or the application of any provision of this Article to any other person, firm, partnership, joint venture, corporation, school district or other governmental entity.

(Ord. 2025, Sec. 1; Ord. 2137, Sec. 1; Ord. 2218, Sec. 1)

**Section 2.** Any existing ordinances inconsistent herewith are repealed, and Article 6 of Chapter XVI of the City Code is amended, upon the effective date of this Ordinance.

**Section 3.** This Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

**Section 4.** This is an amendment to a Charter Ordinance and it, therefore, shall take effect 61 days after its final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the Ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this Ordinance shall become effective upon approval of a majority of the electors voting thereon.

**PASSED** by the Governing Body of the City of De Soto, Kansas, not less than two-thirds of the members-elect voting in favor thereof, on the 18<sup>th</sup> day of April, 2017.

**APPROVED** by the Mayor this 18<sup>th</sup> day of April, 2017.

(Seal)

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Timothy J. Maniez, Mayor

ATTEST:

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Lana R. McPherson, MMC, City Clerk

APPROVED AS TO FORM:

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Patrick G. Reavey, City Attorney