



Seattle

Office of Planning & Community Development

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Date: November 20, 2024

To: City Council Land Use Committee

From: Rico Quirindongo, OPCD
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Subject: Approach for implementing a sales tax deferral for conversions of underutilized commercial space to residential authorized under E2SSB 6175

Summary:

The City wants to support conversions of commercial space to residential, especially in greater downtown, and is seeking to enact a sales and use tax deferral that was authorized under state legislation E2SSB 6175 during the 2024 legislative session. Cities must take local action to put a program in place. This memo summarizes how OPCD proposes to enact the program, including the process to establish it and the method to administer it.

Adoption of the Tax Deferral Program Locally

- **City Council Resolution**

The City must adopt a Resolution of intention to create a sales and use tax deferral program. The Resolution must generally describe the proposed program. It must state the time and place of a public hearing to be held to consider the program. The resolution must provide general information about the application process, the approval process, and the appeals process. OPCD has prepared the Resolution and is striving to transmit it on November 20, 2024. We are providing a Draft Ordinance, draft application form, and draft letters for public review as attachments to the Resolution.

- **Public Hearing and Ordinance Adoption**

A public hearing must be held. Notice must be published once each week for two consecutive weeks, not less than seven days, nor more than 30 days before the date of the hearing. OPCD proposes an Ordinance that would make changes to codify the program in the SMC. We expect that the public hearing will take place on January 30, 2025, and Ordinance adoption would occur in February/March of 2025, following Council's usual process to adopt legislation.

Administration of the Tax Deferral Program

Steps and requirements to administer a program are prescribed by E2SSB 6175, but there are several choices for how the City will perform administration. The purpose of this section is to provide a summary of how the program would work to affected parties. After dialogue with partner departments and other stakeholders, OPCD is proposing to take direct oversight for most aspects of program administration. We are in close contact with the development community and have a high degree of confidence that the volume of conversions to housing will be small. We estimate 12 total projects or

fewer within a 7-year time horizon. This volume is manageable for OPCD to administer with existing staffing levels.

- ***Owner applies for the tax deferral.***
 - The owner applies to the City by completing and submitting a form provided by OPCD (see draft application form). OPCD proposes that the application for tax deferral be submitted to the OPCD Director. The application requirements closely track with the process laid out in E2SSB 6175.
 - OPCD proposes that the owner shall have at least completed a construction or land use permit pre-application with SDCI.
 - OPCD proposes that the tax deferral application is separate from the land use permitting process and is not subject to the State's Land Use Petition Act (LUPA) processes and requirements.
 - Cities have the option of requiring an application fee. However, to streamline the process and avoid complications of receiving funds and compliance with the City's fee subtitle, OPCD proposes to charge no application fee.
 - The application must contain an oath or affirmation regarding the following information:
 - Project description and site plan
 - Statement describing the number of expected affordable housing units
 - Statement of awareness of tax liability if the project ceases to qualify
 - Statement acknowledging the deadline for construction
 - Statement that the owner would not have built here "but for" the tax deferral
 - Documentation of submittal of a construction or land use permit pre-application with SDCI. (Include SDCI construction or land use permit record number.)
- ***The City (OPCD) Reviews the Application and Decides Whether to Grant a "Conditional Certificate of Approval" to the Owner.***
 - An assigned OPCD planner on behalf of the Director reviews the application and determines whether the proposal meets conditions stipulated in E2SSB 6175:
 - The project is multifamily and the applicant has attested to commit to renting/selling at least 10% of the units as affordable
 - The project would be in conformance with plans and regulations when approved
 - The project will occur on underused commercial land (is an existing commercial structure)
 - The project is in an area zoned for commercial or mixed use
 - The project meets the requirements of the RCW
 - The land was not acquired through a condemnation proceeding
 - The City must approve or deny the application within 90 days. If the review finds that the conditions are met the OPCD Director issues a Conditional Certificate of Approval letter to the owner. (Draft attached).
 - If the application is denied, the City must state in writing the reasons for the denial in a letter to the owner.
 - OPCD proposes that the owner may appeal a denial decision to the City's Hearing Examiner (see separate section below).
- ***The Conditional recipient (aka owner) submits an application to the State Department of Revenue (DOR) for the tax deferral. (The City has no direct involvement in this portion of the process).***

- The owner is responsible for submitting its application to DOR. The owner provides a copy of the Conditional Certificate of Approval that was issued to them by the OPCD Director.
 - The owner provides its estimated construction costs and time schedule for construction to DOR.
 - The DOR must rule on the applications within 60 days.
 - The DOR provides information to the owner documenting the approval of the sales tax deferral and determines the total amount of sales taxes up to which the owner is eligible to defer.
 - DOR issues a sales and use tax deferral certificate to the owner that is valid during construction of the project until certificate of occupancy.
- ***The owner proceeds with construction after receiving all other required permits and approvals. (This portion of the process proceeds like any other project.)***
 - The owner procures all other required permits and approvals from the City (SDCI) like any normal development project.
 - The owner undertakes and completes construction of the renovation/conversion.
 - Like any normal project, the City (SDCI) issues a certificate of occupancy upon project completion.
- ***Owner/developer files documentation with the City after project completion***
 - Within 30 days of receiving a Certificate of Occupancy for the building the owner must submit the following documentation to the OPCD Director:
 - i. Description that the work is complete
 - ii. A statement describing the new affordable housing that is offered
 - iii. Statement that the work was completed within 3 years of the conditional certificate of approval letter provided by the City.
 - Within 30 days after receiving the owner's documentation the OPCD Director must determine and notify the owner, in a letter, whether the work completed and the affordable housing to be offered are consistent with the application and the conditional certificate of approval that was provided by the city, and the investment project continues to qualify for a tax deferral. (See draft letter attached.)
 - See separate appeals and denials section below for discussion of denials.
- ***Owner notifies DOR, and DOR certifies the project. (The City is not involved in this step.)***
 - Within 30 days of receiving the City's determination letter, the owner must notify DOR that the project is operationally complete.
 - The DOR proceeds to perform its certification of the project and determine the final qualifying amount of deferred sales taxes.
 - The DOR conducts a site visit to verify the project completion in accord with the conditional approvals.
- ***Owner is responsible for filing annual tax performance documentation to DOR. (The City is not involved in this step.)***
 - The owner of a project receiving the deferral of taxes must file a complete annual tax performance report with DOR pursuant to RCW 82.32.534 beginning the year the certificate of occupancy is issued and each year thereafter for 10 years.

- This annual tax performance documentation is the State's ongoing monitoring process for administering the tax deferral.
- ***The owner files annual reports to the City (OPCD) for a period of ten years.***
 - Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for 10 years, the conditional recipient must file an annual report to the OPCD Director indicating the following:
 - i. A statement describing the affordable housing units on the property fulfilling the requirements for eligibility of the tax deferral
 - ii. A certification that the property has not changed use
 - iii. A description of any changes or improvements constructed after the certificate of occupancy
- ***The City (OPCD) files one annual report to the State Department of Commerce by December 31st starting in 2025 including the following:***
 - The number of program approval certificates granted
 - The total number and type of buildings converted
 - The number of affordable housing units resulting from the conversion
 - The estimated value of the sales and use tax deferral for each investment project receiving a program approval and the total estimated value of sales and use tax deferrals granted
- ***Appeal process if the City denies the application for conditional approval***
 - If the City issues a denial of the initial application by the owner for conditional approval an appeal can be filed with "the city's governing authority or a city official designated by the city to hear such appeals within 30 days after receipt of the denial", according to E2SSB 6175. The appeal "must be based upon the record made before the city".
 - OPCD proposes that the Ordinance establishing the local program identify that a closed record hearing before the City Hearing examiner would be the venue for an appeal of a denial of a Conditional Certificate of Approval letter. We propose that specific text be added to establish this procedure without identifying the conditional approval decision as a Type II decision.
 - We propose that the City also offer a municipal appeal process if the conditional recipient is denied a letter of approval by the City at the conclusion of construction. E2SSB 6175 gives local governments the option of providing an appeal process at this stage. We propose that the Ordinance establishing the local program identify that a closed record hearing before the City Hearing examiner would be the venue for an appeal of a denial of the final determination letter. We propose that specific text be added to establish this procedure without identifying the final determination as a Type II decision.

Next Steps:

OPCD suggest the following next steps:

- Consider the proposed Resolution at Land Use Committee on December 4th, 2024.
- Hold public hearing on the proposed Ordinance on January 30th, 2025, and consider passing the proposed Ordinance out of Land Use Committee on February 20th, 2025.