



Seattle

Office of Planning & Community Development

Rico Quirindongo, Director

Date: December, 2024

To: City Council Land Use Committee

From: Rico Quirindongo, OPCD
Geoff Wentlandt, OPCD

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.

The following are provided as attachments to this memo to provide further information about how the program would work.

- Attachment 1: Draft Application Form
- Attachment 2: Draft Conditional Approval Letter
- Attachment 3: Draft Final Approval Letter

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 prepared the Resolution and transmitted it to Council on November 20, 2024. As of this writing, the City Council Land Use Committee voted to approve the resolution on December 4, 2024, and the full City Council is expected to vote on the resolution on December 17, 2024.

- **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. The public hearing is scheduled to take place before the City Council Land Use Committee in late January or February of 2025.

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 attachment 1 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. (See Attachment 2: Draft Conditional Approval Letter).
- 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 Attachment 3 Draft Final Approval Letter.)
 - 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:

- Hold public hearing on the proposed Ordinance in January or February 2025, and consider passing the proposed Ordinance out of Land Use Committee in February or March 2025.



Application for Conditional Certificate of Program Approval Sales and Use Tax Deferral for Conversion of Underutilized Commercial Property to Housing

Overview

During the 2024 Washington State legislative session the legislature passed and Governor Inslee signed Engrossed Second Substitute Senate Bill 6175 (E2SSB 6175) authorizing a limited sales and use tax deferral program intended to stimulate the redevelopment of underutilized commercial property in targeted urban areas and provide housing supply and affordable housing. In [insert month] of 2025 the Seattle City Council passed ordinance [insert] establishing Chapter 5.75 of the Seattle Municipal Code (SMC) enabling the limited sales and use tax deferral in Seattle. The owner of an investment project that is a conversion of underutilized commercial space to multifamily residential may apply to the City and the Washington State Department of Revenue for a deferral of the sales and use taxes on the construction of the conversion. To be eligible for the tax deferral the investment project must meet all the requirements and conditions of SMC Chapter 5.75 and RCW 82.59, including the requirement that at least ten percent of the dwelling units that are created in the conversion be provided as affordable housing.

This application form is the first step in the approval process for the sales and use tax deferral. It contains guiding information in addition to SMC Chapter 5.75. The owner of an investment project seeking the sales and use tax deferral must submit this application form with complete information to the Director of the Office of Planning and Community Development. Based on the information provided in this form the Director will approve or deny a conditional certificate of program approval.

Application Process and Submission Instructions

- Review the requirements and the process described in SMC Chapter 5.75 and RCW 82.59. It is the applicant's responsibility to understand the program steps and requirements in both the City and State laws.
- Prepare your application by entering information in this document under each of the topics listed below. Complete information must be provided under all topics.
- Prepare additional exhibits, drawings and site information as needed to support your responses.

- Submit materials to the Director of the Office of Planning and Community Development by e-mail to Rico.Quirindongo@Seattle.gov. We advise you to contact the Director's executive assistant at Jane.Klein@Seattle.gov to communicate with the department shortly before submitting your documents to ensure smooth transmittal of materials and to facilitate the fastest possible review.
- After submittal of the application materials the Director or their staff designee will contact you should the need arise to discuss your application or clarify any information.
- The Director will issue a letter of either an approval or denial of a conditional certificate of program approval within 90 days of receipt of your application.

Applicant Contact Information

Investment Project Owner

Provide contact information for the investment project owner. This is the person or entity who is an authorized owner of the commercial property being converted to housing.

Name: _____

Company (if applicable): _____

E-mail: _____

Telephone: _____

Mailing Address: _____

Investment Project Representative

If different from above provide contact information for a project representative who will be the main point of contact with our office for communications regarding this application.

Name: _____

Company (if applicable): _____

E-mail: _____

Telephone: _____

Mailing Address: _____

Required Application Information

You must provide complete information for every one of the seven topic areas listed below. For topics that require a statement provide a complete affirmative statement in text inserted by you.

1. Describe the investment project and provide a site plan

Provide enough information for the Director to understand the full extent of the conversion proposal including all proposed uses and the extent of construction or renovation activities. Attach drawings or exhibits as necessary.

2. Statement of affordable housing and total housing quantities

Provide a statement of the number of affordable housing units you will create and the total number of dwelling units that will be created due to the conversion of underutilized commercial property. For income and rent limits on the affordable housing units, refer to the Seattle Office of Housing's Income and Rent Limits for rental housing programs, and use the table for "Other developer agreements; for example IZ, MFTE (P3, P4, P5 only), MHA, MPC-YT" ([link](#)).

3. Statement of potential tax liability

Provide a statement that you are aware of the potential sales and use tax liability involved if the investment project ceases to be used for eligible uses or otherwise ceases to meet the program requirements and conditions under SMC Chapter 5.75 and RCW 82.59.

Be aware that if after you receive a tax deferral certificate your project changes or otherwise ceases to be eligible for the deferral, such as for failure to maintain compliance with the affordable housing requirement, then all of the sales and use taxes plus interest will be immediately due and payable. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

4. Statement regarding timeline for project completion

Provide a statement that you are aware that the investment project must be completed within three years from the date of issuance of a conditional certificate of program approval.

5. Statement regarding limited opportunity for extension

Provide a statement that you are aware that the Director may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 consecutive months, and only if the Director finds that the work was not completed within the required time period due to circumstances beyond the control of the conditional recipient and that the conditional recipient has been acting and could reasonably be expected to act in good faith and with due diligence.

6. Statement regarding construction in the proposed location

Provide a statement that you would not have built in this location but for the availability of the tax deferral under SMC Chapter 5.75 and RCW 82.59.

7. Documentation of construction or land use permit activity

Provide documentation that you have at least submitted pre-application materials with the Seattle Department of Construction and Inspections (SDCI) for the proposed investment project. If you have received a project number for a construction or land use permit application from SDCI please provide it here.

Oath or Affirmation

This application must be certified by oath or affirmation. The investment project owner must provide the oath or affirmation by signing the statement below before a Notary.

I do solemnly affirm that all the statements and information provided by me in this application are true to the best of my knowledge and belief, and this I do under the penalties of perjury.

Signature: _____ Date: _____

Washington Notary Acknowledgement

State of Washington

County of [COUNTY]

On this ____ day of _____ 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who appeared before me, and said person acknowledged that (she/he/they) signed this instrument and acknowledged it to be (her/his/their) free and voluntary act for the uses and purposes mentioned in the instrument.

(Seal or Stamp)

Signature

NOTARY PUBLIC in and for the State of Washington,
Residing at: _____

My Commission Expires:



Seattle
Office of Planning &
Community Development
Bruce Harrell, Mayor | Rico Quirindongo, Director

600 4th Ave, Floor 5
P.O. Box 94788
Seattle, WA 98124-7088

Month, Date, ####

Applicant Address
Applicant Address
Applicant Address

Re: Application for conditional certificate of program approval for the investment project at [site address]

Dear [owner name],

The Director of the Office of Planning and Community Development received your application for a conditional certificate of program approval for the limited sales and use tax exemption for conversion of the underutilized commercial property at [address] to multifamily residential pursuant to SMC Chapter 5.75 and RCW 82.59 on [month, day, year]. The Director has reviewed the information provided in the application and makes the following decision and findings.

Decision

The application for conditional certificate of program approval is [**approved/denied**]. This letter constitutes your [conditional certificate of program approval /notice of denial of conditional certificate of program approval].

Findings

The following findings are made by the OPCD Director in support of the decision. [This section would be revised if the decision is deny, to document the reason for the denial].

1. The investment project consists primarily of multifamily residential use and the applicant commits to renting or selling at least 10 percent of the dwelling units as affordable housing. # total dwelling units will be created by the investment project and # of the dwelling units will be offered as affordable housing. Only the ground floor of the building will be used for commercial purposes and the remainder will be dedicated to multifamily residential use.

2. The investment project is, or will be at the time of completion, in conformance with all local plans and regulations that apply at the time of this conditional certificate of program approval. Receipt of all required construction and land use permits issued by the Seattle Department of Construction and Inspections must be obtained and shall evidence the conformance.

3. The investment project will occur on land that constitutes, at the time of this conditional certificate of program approval, underutilized commercial property.
4. The area where the investment project will occur is located within an area zoned for residential or mixed uses. The investment project is in the [insert zone name].
5. According to the information provided in the application, the terms and conditions of the implementation of the investment project meet the requirements of Seattle Municipal Code Chapter 5.75.
6. The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW.
7. All other requirements of RCW 82.59 appear to be satisfied in the best estimation of the Director of the Office of Planning and Community Development.

Next Steps

[This section would be revised to identify the appeal opportunity if the decision is deny]. This conditional certificate of program approval may be presented by you to the Washington State Department of Revenue. It is your responsibility to comply with the requirements and conditions of Chapter 5.75 and RCW 82.59 to successfully obtain and maintain the limited sales and use tax deferral.

Be aware that if after you receive a tax deferral certificate your project changes or otherwise ceases to be eligible for the deferral, such as for failure to maintain compliance with the affordable housing requirement, then all of the sales and use taxes plus interest will be immediately due and payable. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

The City of Seattle will not be directly involved in your process with the Washington State Department of Revenue. Within 30 days of the issuance of a certificate of occupancy by SDCI for your eligible investment project you must file with the Director of the Office of Planning and Community Development the documentation as described in SMC 5.75.060.

Should you have any questions please do not hesitate to contact my staff member [name] at [e-mail].

Sincerely,

Rico Quirindongo,
Director



Seattle
Office of Planning &
Community Development
Bruce Harrell, Mayor | Rico Quirindongo, Director

600 4th Ave, Floor 5
P.O. Box 94788
Seattle, WA 98124-7088

Month, Date, ####

Applicant Address
Applicant Address
Applicant Address

Re: Project completion certificate of approval for the investment project at [site address]

Dear [owner name],

The Director of the Office of Planning and Community Development received the documentation you provided following the issuance of a certificate of occupancy for the eligible investment project at [insert address] on [month, day, year]. The Director previously issued a conditional certificate of program approval to you for the limited sales and use tax exemption for conversion of the underutilized commercial property at [address] to multifamily residential pursuant to Seattle Municipal Code (SMC) Chapter 5.75 and RCW 82.59 on [month, day, year]. The Director has reviewed the documentation that you provided about the complete investment project and makes the following determination.

Determination

The work completed and the affordable housing to be offered are consistent with the conditional certificate of approval. The investment project continues to qualify for a tax deferral under SMC Chapter 5.75 and RCW 82.59.

Findings

[This section would be revised if the decision is deny, to document the reason for the denial]. The following findings are made by the OPCD Director in support of the determination. [This section would be revised if the decision is deny, to document the reason for the denial].

1. The work was completed within three years of the conditional certificate of program approval.
2. The work was constructed consistent with the application for conditional certificate of approval other applicable program requirements.
3. The affordable housing units to be offered are consistent with the application and criteria of the program requirements. ## total dwelling units will be created by the investment project and ## of the dwelling units will be offered as affordable housing.

Next Steps

[This section would be revised to identify the appeal opportunity if the decision is deny]. This determination that the investment project continues to be eligible for the sales and use tax deferral may be presented by you to the Washington State Department of Revenue. It is your responsibility to comply with the requirements and conditions of SMC Chapter 5.75 and RCW 82.59 to successfully maintain the limited sales and use tax deferral. The City of Seattle will not be directly involved in your process with the Washington State Department of Revenue.

Be aware that if after you receive a tax deferral certificate your project changes or otherwise ceases to be eligible for the deferral, such as for failure to maintain compliance with the affordable housing requirement, then all of the sales and use taxes plus interest will be immediately due and payable. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for ten years, you must file with the Director of the Office of Planning and Community Development an annual report containing the information specified in SMC 5.75.070.

Should you have any questions please do not hesitate to contact my staff member [name] at [e-mail].

Sincerely,

Rico Quirindongo,
Director