

Chapter 82.59 RCW

CONVERSION OF UNDERUTILIZED COMMERCIAL PROPERTY TO AFFORDABLE HOUSING

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RCW 82.59.005 Findings. The legislature finds that:

(1) Many cities in Washington are actively planning for growth under the growth management act, chapter 36.70A RCW, and through tax incentives, the private market can assist Washington in meeting its housing goals;

(2) Many downtown centers lack available affordable housing, which results in long commutes that increase greenhouse gas emissions and by using existing buildings to create affordable housing units, units can be available more quickly and with a reduced impact on waste streams and the environment compared to newly constructed units;

(3) The construction industry provides living wage jobs for families across Washington;

(4) In the current economic climate, the creation of additional affordable housing units is essential to the economic health of our cities and our state;

(5) It is critical that Washington state promote its cities and its property owners that will provide affordable housing;

(6) Constructing new housing units can take years, and many existing buildings can be repurposed quickly to meet the state's workforce and affordable housing needs;

(7) Many existing buildings are located in downtown centers, near work and services where there is limited land available for new construction;

(8) In downtowns across the state, there is a high level of open commercial space, which will likely remain, due to changes in how businesses use office space following the COVID-19 pandemic;

(9) A meaningful, fair, and predictable economic incentive should be created to stimulate the redevelopment of underutilized commercial property in targeted urban areas through a limited sales and use tax deferral program as provided by this chapter; and

(10) This limited tax deferral will help the owners achieve the highest and best use of land and enable cities to more fully realize their planning goals. [2024 c 332 s 1.]

RCW 82.59.007 Purpose. It is the purpose of this chapter to encourage the redevelopment of underutilized commercial property in targeted urban areas, thereby increasing affordable housing, employment opportunities, and helping accomplish the other planning goals of Washington cities. The legislative authorities of cities to which this chapter applies may authorize a sales and use tax deferral for an investment project within the city if the legislative authority of the city finds that there are significant areas of underutilized commercial property and a lack of affordable housing in areas proximate to the land. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid. [2024 c 332 s 2.]

RCW 82.59.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affordable housing" means:

(a) Homeownership housing intended for owner occupancy to low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income;

(b) "Rental housing" for low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(2) "Applicant" means an owner of commercial property.

(3) "City" means any city or town, including a code city.

(4) "Conditional recipient" means an owner of commercial property granted a conditional certificate of program approval under this chapter, which includes any successor owner of the property.

(5) "Eligible investment project" means an investment project that is located in a city and receiving a conditional certificate of program approval.

(6) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which a deferral may be granted under this chapter.

(7) "Household" means a single person, family, or unrelated persons living together.

(8) (a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(9) "Investment project" means an investment in multifamily housing, including labor, services, and materials incorporated in the planning, installation, and construction of the project. "Investment

project" includes investment in related facilities such as playgrounds and sidewalks as well as facilities used for business use for mixed-use development.

(10) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

(11) "Multifamily housing" means a building or a group of buildings having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(12) "Owner" means the property owner of record.

(13) "Underutilized commercial property" means an entire property, or portion thereof, currently used or intended to be used by a business for retailing or office-related or administrative activities. If the property is used partly for a qualifying use and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department. For the purposes of this subsection, "qualifying use" means used or intended to be used by a business for retailing or office-related or administrative activities. [2024 c 332 s 3.]

RCW 82.59.020 Sales and use tax deferral program—Creation. (1)

For the purpose of creating a sales and use tax deferral program for conversion of a commercial building to provide affordable housing under this chapter, the governing authority must adopt a resolution of intention to create a sales and use tax deferral program as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the creation of the tax deferral program and may include such other information pertaining to the creation of the deferral program as the governing authority determines to be appropriate to apprise the public of the action intended. However, the resolution must provide information pertaining to:

(a) The application process;

(b) The approval process;

(c) The appeals process for applications denied approval; and

(d) Additional requirements, conditions, and obligations that must be followed postapproval of an application.

(2) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than 30 days before the date of the hearing in a paper having a general circulation in the city. The notice must state the time, date, place, and purpose of the hearing.

(3) Following the hearing or a continuance of the hearing, the governing authority may authorize the creation of the program. [2024 c 332 s 4.]

RCW 82.59.030 Initial application for a sales and use tax deferral. An owner of underutilized commercial property seeking a sales and use tax deferral for conversion of a commercial building to provide affordable housing under this chapter on an investment project must complete the following procedures:

- (1) The owner must apply to the city on forms adopted by the governing authority. The application must contain the following:
 - (a) Information setting forth the grounds supporting the requested deferral including information indicated on the application form or in the guidelines;
 - (b) A description of the investment project and site plan, and other information requested;
 - (c) A statement of the expected number of affordable housing units to be created;
 - (d) A statement that the applicant is aware of the potential tax liability involved if the investment project ceases to be used for eligible uses under this chapter;
 - (e) A statement that the applicant is aware that the investment project must be completed within three years from the date of approval of the application;
 - (f) A statement that the applicant is aware that the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 consecutive months; and
 - (g) A statement that the applicant would not have built in this location but for the availability of the tax deferral under this chapter;
- (2) The applicant must verify the application by oath or affirmation; and
- (3) The application must be accompanied by the application fee, if any, required under this chapter. The duly authorized administrative official or committee of the city may permit the applicant to revise an application before final action by the duly authorized administrative official or committee of the city. [2024 c 332 s 5.]

RCW 82.59.040 Conditional approval of applications—Conditions. The duly authorized administrative official or committee of the city may approve the application and grant a conditional certificate of program approval if it finds that:

- (1) (a) The investment project is set aside primarily for multifamily housing units and the applicant commits to renting or selling at least 10 percent of the units as affordable housing to low-income households. In a mixed-use project, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units; and
- (b) The applicant commits to any additional affordability and income eligibility conditions adopted by the local government under this chapter not otherwise inconsistent with this chapter;
- (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 the application is approved;
- (3) The investment project will occur on land that constitutes, at the time of application, underutilized commercial property;

(4) The area where the investment project will occur is located within an area zoned for residential or mixed uses;

(5) The terms and conditions of the implementation of the development meets the requirements of this chapter and any requirements of the city that are not otherwise inconsistent with this chapter;

(6) The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW; and

(7) All other requirements of this chapter have been satisfied as well as any other requirements of the city that are not otherwise inconsistent with this chapter. [2024 c 332 s 6.]

RCW 82.59.050 Conditional approval of applications—Appeals.

(1) The duly authorized administrative official or committee of the city must approve or deny an application filed under this chapter within 90 days after receipt of the application.

(2) If the application is approved, the city must issue the applicant a conditional certificate of program approval. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the investment project as described in the application will comply with the required criteria of this chapter.

(3) If the application is denied by the city, the city must state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within 10 days of the denial.

(4) Upon denial by the city, an applicant may appeal the denial to 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. The appeal before the city's governing authority or designated city official must be based upon the record made before the city with the burden of proof on the applicant to show that there was no substantial evidence to support the city's decision. The decision of the city on the appeal is final. [2024 c 332 s 7.]

RCW 82.59.060 Application fee. The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority in administering the program under this chapter. The application fee must be paid at the time the application for program approval is filed. [2024 c 332 s 8.]

RCW 82.59.070 Certificate of occupancy—Approval or denial of tax deferral—Appeals. (1) Within 30 days of the issuance of a certificate of occupancy for an eligible investment project, the conditional recipient must file with the city the following:

(a) A description of the work that has been completed and a statement that the eligible investment project qualifies the property for a sales and use tax deferral under this chapter;

(b) A statement of the new affordable housing to be offered as a result of the conversion of underutilized commercial property to multifamily housing; and

(c) A statement that the work has been completed within three years of the issuance of the conditional certificate of program approval.

(2) Within 30 days after receipt of the statements required under subsection (1) of this section, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing to be offered are consistent with the application and the contract approved by the city, and the investment project continues to qualify for a tax deferral under this chapter. The conditional recipient must notify the department within 30 days from receiving the city's determination to report the project is operationally complete so the department can certify the project and determine the qualifying deferred taxes. The department must determine the amount of sales and use taxes qualifying for the deferral. If the department determines that purchases were not eligible for deferral it must assess interest, but not penalties, on the nonqualifying amounts.

(3) The city must notify the conditional recipient within 30 days that a tax deferral under this chapter is denied if the city determines that:

(a) The work was not completed within three years of the application date;

(b) The work was not constructed consistent with the application or other applicable requirements;

(c) The affordable housing units to be offered are not consistent with the application and criteria of this chapter; or

(d) The owner's property is otherwise not qualified for a sales and use tax deferral under this chapter.

(4) If the city 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, the governing authority may extend the deadline for completion of the work for a period not to exceed 24 consecutive months, and must notify the department of the extension.

(5) The city's governing authority may enact an ordinance to provide a process for a conditional recipient to appeal a decision by the city that the conditional recipient is not entitled to a deferral of sales and use taxes. The conditional recipient may appeal a decision by the city to deny a deferral of sales and use taxes in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within 30 days of notification by the city to the conditional recipient.

(6) A city denying a conditional recipient of a sales and use tax deferral under subsection (3) of this section must notify the department and taxes deferred under this chapter are immediately due and payable, subject to any appeal by the conditional recipient. The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. [2024 c 332 s 9.]

RCW 82.59.080 Annual report—Annual tax preference report—Report by city. (1) 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 with a designated

authorized representative of the city an annual report indicating the following:

(a) A statement of the affordable housing units constructed on the property as of the anniversary date;

(b) A certification by the conditional recipient that the property has not changed use;

(c) A description of changes or improvements constructed after issuance of the certificate of occupancy; and

(d) Any additional information requested by the city.

(2) The conditional recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department pursuant to RCW 82.32.534 beginning the year the certificate of occupancy is issued and each year thereafter for 10 years.

(3) A city that issues a certificate of program approval under this chapter must report annually by December 31st of each year, beginning in 2025, to the department of commerce. The report must include the following information:

(a) The number of program approval certificates granted;

(b) The total number and type of buildings converted;

(c) The number of affordable housing units resulting from the conversion of underutilized commercial property to multifamily housing; and

(d) 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. [2024 c 332 s 10.]

RCW 82.59.090 Initiation of construction. (Expires July 1, 2034.) (1) A conditional recipient must submit an application to the department before initiation of the construction of the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application must be made to the department in a form and manner prescribed by the department. The application must include a copy of the conditional certificate of program approval issued by the city, estimated construction costs, time schedules for completion and operation, and any other information required by the department. The department must rule on the application within 60 days.

(2) The department must provide information to the conditional recipient regarding documentation that must be retained by the conditional recipient in order to substantiate the amount of sales and use tax actually deferred under this chapter.

(3) The department may not accept applications for the deferral under this chapter after June 30, 2034.

(4) The application must include a waiver by the conditional recipient of the four-year limitation under RCW 82.32.100.

(5) This section expires July 1, 2034. [2024 c 332 s 11.]

RCW 82.59.100 Sales and use tax deferral certificates. (Expires July 1, 2034.) (1) After receiving the conditional certificate of program approval issued by the city and approval of an application by the department as provided in RCW 82.59.090(1), the department must issue a sales and use tax deferral certificate for state and local

sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project.

(2) The department must keep a running total of all estimated sales and use tax deferrals provided under this chapter during each fiscal biennium.

(3) The deferral certificate is valid during active construction of a qualified investment project and expires on the day the city issues a certificate of occupancy for the investment project for which a deferral certificate was issued.

(4) This section expires July 1, 2034. [2024 c 332 s 12.]

RCW 82.59.110 Voluntary discontinuance. (1) If a conditional recipient voluntarily opts to discontinue compliance with the requirements of this chapter, the recipient must notify the city and department within 60 days of the change in use or intended discontinuance.

(2) If, after the department has issued a sales and use tax deferral certificate and the conditional recipient has received a certificate of occupancy, the city finds that a portion of an investment project is changed or will be changed to disqualify the recipient for sales and use tax deferral eligibility under this chapter, the city must notify the department and all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

(3) This section does not apply after 10 years from the date of the certificate of occupancy. [2024 c 332 s 13.]

RCW 82.59.120 Transfers of eligible projects. (1) Transfer of investment project ownership does not terminate the deferral. The deferral is transferred subject to the successor meeting the eligibility requirements of this chapter.

(2) The transferor of an eligible project must notify the city and the department of such transfer. The city must certify to the department that the successor meets the requirements of the deferral. The transferor must provide the information necessary for the department to transfer the deferral. If the transferor fails to notify the city and the department, all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. [2024 c 332 s 14.]

RCW 82.59.130 Tax preference performance statement. (1) This section is the tax preference performance statement for the tax preference contained in chapter 332, Laws of 2024. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to expand affordable housing options for low-income households, specifically in urban areas where there is underutilized commercial property.

(4) (a) To measure the effectiveness of the tax preference in chapter 332, Laws of 2024, the joint legislative audit and review committee must evaluate the number of increased housing units on underutilized commercial property. If a review finds that the number of affordable housing units has not increased, then the legislature intends to repeal this tax preference.

(b) The review must be provided to the fiscal committees of the legislature by December 31, 2032.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including data collected by the department under RCW 82.59.080. [2024 c 332 s 15.]

RCW 82.59.140 Multiple-unit housing property tax exemption program. An owner of underutilized commercial property claiming a sales and use tax deferral under this chapter may also apply for the multiple-unit housing property tax exemption program under chapter 84.14 RCW. For applicants receiving the property tax exemption under chapter 84.14 RCW, the amount of affordable housing units required for eligibility under this chapter is in addition to the affordability conditions in chapter 84.14 RCW. [2024 c 332 s 16.]