

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE creating a new sales and use tax deferral for the conversion of underutilized commercial property to housing, adding a new Chapter 5.75 to the Seattle Municipal Code.

..body

WHEREAS, during the 2024 Washington State legislative session, the legislature passed and

Governor Inslee signed Engrossed Second Substitute Senate Bill 6175 (E2SSB 6175),

codified in chapter 82.59 RCW, which authorizes The City of Seattle to take legislative

action to establish a sales and use tax deferral program to promote the redevelopment of

underutilized commercial property in urban areas; and

WHEREAS, E2SSB 6175 promotes the redevelopment of underutilized commercial property

into housing and affordable housing by allowing deferral of sales and use tax for would-

be developers of such housing; and

WHEREAS, there are significant areas of underutilized commercial properties in Seattle’s urban

centers, especially in downtown; and

WHEREAS, there is a lack of affordable housing in Seattle, including within or proximate to

areas with underutilized commercial properties, as documented in the housing cost

burden section of the housing appendix to the One Seattle Plan Comprehensive Plan; and

WHEREAS, The City of Seattle desires to create a program pursuant to E2SSB 6175 to

encourage the redevelopment of underutilized commercial property into additional

housing and affordable housing to help meet strong demand for housing in the region and

for economic development and downtown activation purposes; and

WHEREAS, in June 2023, Mayor Bruce Harrell released a Downtown Activation Plan that identified numerous strategies and actions to support downtown recovery, including actions that increase residential uses in downtown; and

WHEREAS, additional housing in downtown Seattle and other locations where underutilized commercial space may be converted to housing would further City objectives for economic development, revitalization and activation; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 5.75, which includes new Sections 5.75.010, 5.75.020, 5.75.030, 5.75.40, 5.75.050, 5.75.060, 5.75.070, 5.75.080, 5.75.090, 5.75.100, and 5.75.110 is added to Title 5 of the Seattle Municipal Code as follows:

Chapter 5.75 Sales and Use Tax Deferral for Conversion to Housing

Section 5.75.010 Definitions

The definitions in this Chapter 5.75 and the definitions contained in Title 23 apply throughout this Chapter 5.75. If the same term is defined in this section and in Title 23 the definitions of this Section 5.75.020 shall prevail.

A. “Affordable housing” means:

1. 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;

2. 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.

B. “Applicant” means an owner of commercial property.

1 C. “Conditional recipient” means an owner of commercial property granted a conditional
2 certificate of program approval under this Chapter 5.75, which includes any successor owner of
3 the property.

4 D. “Director” means the Director of the City of Seattle Office of Planning and
5 Community Development or their designee.

6 E. “Eligible investment project” means an investment project that is located within
7 Seattle and receiving a conditional certificate of program approval.

8 F. “Investment project” means an investment in multifamily housing, including labor,
9 services, and materials incorporated in the planning, installation, and construction of the project,
10 and includes investment in related facilities such as playgrounds and sidewalks as well as
11 facilities used for business use for mixed-use development.

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

16 H. “Underutilized commercial property” means an entire property, or portion thereof,
17 currently used or intended to be used by a business for retailing or office-related or
18 administrative activities.

19 **Section 5.75.020 Application process**

20 An owner of underutilized commercial property seeking a sales and use tax deferral for
21 conversion of a commercial building to provide housing and affordable housing under this
22 Chapter 5.75 on an investment project must complete the following procedures:

1 A. The owner must apply to the Director in writing, on forms provided by the Office of
2 Planning and Community Development. The application must contain the following:

3 1. Information setting forth the grounds supporting the requested deferral;
4 2. A description of the investment project and site plan;
5 3. A statement of the expected number of affordable housing units to be created
6 and the total number of dwelling units created due to the conversion of underutilized commercial
7 property;

8 4. A statement that the applicant is aware of the potential tax liability involved if
9 the investment project ceases to be used for eligible uses under this Chapter 5.75;

10 5. A statement that the applicant is aware that the investment project must be
11 completed within three years from the date of issuance of a conditional certificate of program
12 approval;

13 6. A statement that the applicant is aware that the Director may extend the
14 deadline for completion of construction or rehabilitation for a period not to exceed 24
15 consecutive months;

16 7. A statement that the applicant would not have built in this location but for the
17 availability of the tax deferral under this Chapter 5.75; and

18 8. Documentation of submittal of a construction or land use permit pre-application
19 with the Seattle Department of Construction and Inspections.

20 B. The applicant must verify the application by oath or affirmation.

21 **Section 5.75.030 Approval process**

22 A. The Director may approve the application and grant a conditional certificate of
23 program approval if it finds that:

1 1. The investment project consists primarily of multifamily residential use and the
2 applicant commits to renting or selling at least 10 percent of the dwelling units as affordable
3 housing. In a mixed-use project, only the ground floor of a building may be used for commercial
4 purposes with the remainder dedicated to multifamily residential use; and

5 2. The investment project is, or will be at the time of completion, in conformance
6 with all local plans and regulations that apply at the time of the conditional certificate of program
7 approval;

8 3. The investment project will occur on land that constitutes, at the time of the
9 conditional certificate of program approval, underutilized commercial property;

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

12 5. The terms and conditions of the implementation of the development meets the
13 requirements of this Chapter 5.75; and

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

16 7. All other requirements this Chapter 5.75 appear to be satisfied in the best
17 estimation of the Director.

18 **Section 5.75.040 Appeals process**

19 A. The Director must approve or deny an application filed under this Chapter 5.75 within
20 90 days after receipt of the application.

21 B. If the application is approved, the Director must issue the applicant a conditional
22 certificate of program approval. The conditional certificate of program approval shall be in a

1 letter, and the letter must contain a statement that the investment project as described in the
2 application will comply with the required criteria of this Chapter 5.75.

3 C. If the application is denied the Director must state in writing in a letter the reasons for
4 denial and send the notice to the applicant at the applicant's last known address within 10 days of
5 the denial.

6 D. Upon denial of an application, an applicant may appeal the denial to the City's
7 Hearing Examiner within 30 days after receipt of the denial. The appeal before the Hearing
8 Examiner must be based upon the record made before the City with the burden of proof on the
9 applicant to show that there was no substantial evidence to support the City's decision. The
10 decision of the Hearing Examiner on appeal is final.

11 **Section 5.75.050 Additional requirements, conditions, and obligations**

12 A. Within 30 days of the issuance of a certificate of occupancy by the City for an eligible
13 investment project, the conditional recipient must file with the Director the following:

14 1. A description of the work that has been completed and a statement that the
15 eligible investment project qualifies the property for a sales and use tax deferral under this
16 Chapter 5.75;

17 2. A statement of the new affordable housing to be offered as a result of the
18 conversion of underutilized commercial property to multifamily residential use including
19 identification of the specific dwelling units to be offered as affordable housing and the monthly
20 rent charged for each, and a statement of the total number of dwelling units to be offered as a
21 result of the conversion of underutilized commercial property to multifamily residential use; and

22 3. A statement that the work has been completed within three years of the
23 issuance of the conditional certificate of program approval.

1 B. Within 30 days after receipt of the statements required under subsection 5.75.050.A,
2 the Director must determine and notify the conditional recipient in a letter as to whether the work
3 completed and the affordable housing to be offered are consistent with the application and the
4 conditional certificate of approval, and the investment project continues to qualify for a tax
5 deferral under this Chapter 5.75. The conditional recipient must notify the Washington State
6 Department of Revenue within 30 days from receiving the determination from the Director that
7 the investment project continues to qualify for a tax deferral under this Chapter 5.75.

8 C. The Director must notify the conditional recipient within 30 days after receipt of the
9 statements required under subsection 5.75.050.A that a tax deferral under this Chapter 5.75 is
10 denied if the Director determines that:

11 1. The work was not completed within three years of the conditional certificate of
12 program approval; or

13 2. The work was not constructed consistent with the application or other
14 applicable requirements; or

15 3. The affordable housing units to be offered are not consistent with the
16 application and criteria of this Chapter 5.75; or

17 4. The owner's property is otherwise not qualified for a sales and use tax deferral
18 under this Chapter 5.75.

19 D. If the Director finds that the work was not completed within the required time period
20 due to circumstances beyond the control of the conditional recipient and that the conditional
21 recipient has been acting and could reasonably be expected to act in good faith and with due
22 diligence, the Director may extend the deadline for completion of the work for a period not to

1 exceed 24 consecutive months, and must notify the Washington State Department of Revenue of
2 the extension.

3 E. If the Director determines the conditional recipient is not entitled to a sales and use tax
4 deferral under subsection 5.75.050.C, the conditional recipient may appeal the decision to the
5 City’s Hearing Examiner within 30 days after receipt of the denial. The appeal before the
6 Hearing Examiner must be based upon the record made before the City with the burden of proof
7 on the applicant to show that there was no substantial evidence to support the City’s decision.

8 F. Upon denial of the sales and use tax deferral under subsection 5.75.050.C the Director
9 shall notify the Washington State Department of Revenue, upon which taxes deferred under this
10 chapter are immediately due and payable, subject to any appeal by the conditional recipient.

11 **Section 5.75.060 Annual report**

12 A. Thirty days after the anniversary of the date of issuance of the certificate of occupancy
13 and each year thereafter for ten years, the conditional recipient must file with the Director an
14 annual report indicating the following:

15 1. A statement of the affordable housing offered as a result of the conversion of
16 underutilized commercial property to multifamily residential use including identification of the
17 specific dwelling units offered as affordable housing and the rent charged for each, and a
18 statement of the total number of dwelling units offered as a result of the conversion of
19 underutilized commercial property to multifamily residential use; and

20 2. A certification by the conditional recipient that the property has not changed
21 use;

22 3. A description of changes or improvements constructed after issuance of the
23 certificate of occupancy.

1 B. The conditional recipient of a deferral of taxes under this Chapter 5.75 must file a
2 complete annual tax performance report with the Washington State Department of Revenue
3 pursuant to RCW 82.32.534 beginning the year the certificate of occupancy is issued and each
4 year thereafter for 10 years.

5 C. If the City issues a certificate of program approval under this Chapter 5.75, it shall
6 report annually by December 31st of each year, beginning in 2025, to the Washington State
7 Department of Commerce the following information:

- 8 1. The number of program approval certificates granted;
- 9 2. The total number and type of buildings converted;
- 10 3. The number of affordable housing units resulting from the conversion of
11 underutilized commercial property to multifamily residential use; and
- 12 4. The estimated value of the sales and use tax deferral for each investment
13 project receiving a certificate of program approval and the total estimated value of sales and use
14 tax deferrals granted.

15 **Section 5.75.070 Voluntary discontinuance**

16 A. If a conditional recipient voluntarily opts to discontinue compliance with the
17 requirements of this Chapter 5.75, the recipient must notify the Director and the Washington
18 State Department of Revenue within 60 days of the change in use or intended discontinuance.

19 B. If, after the Washington State Department of Revenue has issued a sales and use tax
20 deferral certificate and the conditional recipient has received a certificate of occupancy, the City
21 finds that a portion of an investment project is changed or will be changed to disqualify the
22 recipient for sales and use tax deferral eligibility under this Chapter 5.75, the City of Seattle's

Office of Planning and Community Development must notify the Washington State Department of Revenue and all deferred sales and use taxes are immediately due and payable.

C. This Section 5.75.070 does not apply after 10 years from the date of the certificate of occupancy.

Section 5.75.080 Transfer of ownership

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 5.75. The transferor of an eligible project must notify the Director and the Washington State Department of Revenue of such transfer, in writing and whereupon the Director will certify to the Washington State Department of Revenue whether the successor meets the requirements of the deferral. The transferor must provide the information necessary for the Washington State Department of Revenue to transfer the deferral. If the transferor fails to notify the Director and the Washington State Department of Revenue, all deferred sales and use taxes are immediately due and payable.

Section 5.75.090 Combination with multi-family tax exemption

An owner of underutilized commercial property claiming a sales and use tax deferral under this Chapter 5.75 may also apply for the Multifamily Housing Property Tax Exemption under Chapter 5.72 or Chapter 5.73 and Chapter 84.14 RCW. For applicants receiving a property tax exemption under Chapter 5.72 or Chapter 5.73 and Chapter 84.14 RCW, the amount of affordable housing units required for eligibility under this Chapter 5.75 is in addition to the affordability conditions in Chapter 5.72 or Chapter 5.73 and Chapter 84.14 RCW.

Section 5.75.110 Sunset

This sales and use tax deferral program shall expire such that new applications for the sales and use tax deferral shall not be accepted beginning 10 years from the effective date of this

1 ordinance. Investment projects that receive a conditional certificate of approval based on an
2 application submitted before the sunset date shall remain eligible for the sales and use tax
3 deferral subject to the terms and conditions in this Chapter 5.75.

4 Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this
5 ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such
6 invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any
7 other section, subsection, sentence, clause, phrase or words of this ordinance.

Section 3. This ordinance shall take effect as provided by Seattle Municipal Code
Sections 1.04.020 and 1.04.070.

Passed by the City Council the _____ day of _____, 2024,
and signed by me in open session in authentication of its passage this _____ day of
_____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)