

**Agenda Sheet for City Council:****Committee:** Urban Experience **Date:** 07/08/2024**Committee Agenda type:** Consent**Date Rec'd** 7/8/2024**Clerk's File #** ORD C36548**Cross Ref #** RES 2024-0066**Project #****Council Meeting Date:** 07/22/2024

|                           |   |                      |  |
|---------------------------|---|----------------------|--|
| <b>Submitting Dept</b>    | COMMUNITY AND ECONOMIC                          | <b>Bid #</b>         |  |
| <b>Contact Name/Phone</b> | STEVE X6835                                     | <b>Requisition #</b> |  |
| <b>Contact E-Mail</b>     | SMACDONALD@SPOKANECITY.ORG                      |                      |  |
| <b>Agenda Item Type</b>   | First Reading Ordinance                         |                      |  |
| <b>Council Sponsor(s)</b> | ZZAPPONE JBINGLE KKLITZKE                       |                      |  |
| <b>Agenda Item Name</b>   | 0750 - ORDINANCE FOR SALES TAX DEFERRAL PROGRAM |                      |  |

**Agenda Wording**

Ordinance for a Sales Tax Deferral Program for redevelopment of underutilized commercial property

**Summary (Background)**

Senate Bill 6175, passed by the legislature this past session, authorizes the City to establish a sales and use tax deferral program to promote the redevelopment of underutilized commercial property for affordable housing. The ordinance: • Updates SMC 08.07D to a new name (Sales and Use Tax Deferral Program for Underdeveloped Urban Land Redevelopment) to eliminate confusion with other sales and use tax deferral programs for affordable housing.

Lease? NO Grant related? NO Public Works? NO

**Fiscal Impact**

Approved in Current Year Budget? N/A

Total Cost \$

Current Year Cost \$

Subsequent Year(s) Cost \$

**Narrative****Amount****Budget Account**

|        |    |   |                                 |
|--------|----|---|---------------------------------|
| Select | \$ | # |                                 |
| Select | \$ | # | FIRST READING OF THE ABOVE      |
| Select | \$ | # | ORDINANCE HELD ON               |
| Select | \$ | # | 7/22/2024                       |
| Select | \$ | # | AND FURTHER ACTION WAS DEFERRED |
| Select | \$ | # | <i>[Signature]</i>              |
| Select | \$ | # | CITY CLERK                      |
|        |    |   | PASSED BY                       |
|        |    |   | SPOKANE CITY COUNCIL            |
|        |    |   | 8/12/2024                       |
|        |    |   | <i>[Signature]</i>              |
|        |    |   | CITY CLERK                      |



## Committee Agenda Sheet

### Urban Experience Committee

|  |  |
|--|--|
| <b>Committee Date</b>  | 7/8/2024   |
| <b>Submitting Department</b>   | Mayor's Office   Planning & Economic Development   |
| <b>Contact Name</b>  | Steve MacDonald  |
| <b>Contact Email &amp; Phone</b>   | smcdonald@spokanecity.org  |
| <b>Council Sponsor(s)</b>  | <u>Zappone</u>   |
| <b>Select Agenda Item Type</b>   | <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion    Time Requested: 5 minutes   |
| <b>Agenda Item Name</b>  | Resolution and Ordinance for a Sales Tax Deferral Program for redevelopment of underutilized commercial property   |
| <b>Proposed Council Action</b>   | <input checked="" type="checkbox"/> Approval to proceed to Legislative Agenda <input type="checkbox"/> Information Only  |
| <b>Summary (Background)</b><br><br>*use the Fiscal Impact box below for relevant financial information   | <p>Senate Bill 6175, passed by the 2024 Washington Legislature and enacted as Chapter 332, Laws of 2024, authorizes the City to establish a sales and use tax deferral program to promote the redevelopment of underutilized commercial property for affordable housing.</p> <p>This resolution:</p> <ul style="list-style-type: none"> <li>• declares the City's intention to establish a sales and use tax deferral program to encourage redevelopment of underutilized commercial property for affordable housing.</li> <li>• Sets the public hearing date for the ordinance for August 12<sup>th</sup>.</li> </ul> <p>The ordinance:</p> <ul style="list-style-type: none"> <li>• Updates SMC 08.07D to a new name (Sales and Use Tax Deferral Program for Underdeveloped Urban Land Redevelopment) to eliminate confusion with other sales and use tax deferral programs for affordable housing.</li> <li>• Consistent with SB 6175, establishes a new Chapter SMC 08.07E setting forth the application, appeals, approval process, and reporting requirements for the sales tax deferral program to encourage the redevelopment of underutilized commercial property.</li> </ul> |
| <b>Fiscal Impact</b><br><b>Approved in current year budget?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A<br>Total Cost: <a href="#">Click or tap here to enter text.</a><br>Current year cost:<br>Subsequent year(s) cost: |  |
| <b>Narrative:</b> Please provide financial due diligence review, as applicable, such as number and type of positions, grant match requirements, summary type details (personnel, maintenance and supplies, capital, revenue), impact on rates, fees, or future shared revenue      |  |
| <b>Funding Source</b> <input type="checkbox"/> One-time <input type="checkbox"/> Recurring <input checked="" type="checkbox"/> N/A<br>Specify funding source: Reallocation<br>Is this funding source sustainable for future years, months, etc?                                    |  |

**Expense Occurrence**    One-time    Recurring    N/A

Other budget impacts: (revenue generating, match requirements, etc.)

**Operations Impacts** (If N/A, please give a brief description as to why)

What impacts would the proposal have on historically excluded communities?

The purpose of this sales and use tax deferral program is to provide additional affordable housing.

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?

The Planning and Economic Development team will track affordable housing units developed as a result of this program.

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

This program automatically expires ten years from the adoption of the ordinance. Success of the program will be determined by the number of affordable housing units constructed as a result of this program.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

This program was a high legislative priority for the City of Spokane and aligns with our affordable housing goals in the Comprehensive Plan and Housing Action Plan.

## ORDINANCE C36548

An ordinance relating to the establishment of a sales and use tax deferral program for affordable housing; retitling chapter 08.07D of the Spokane Municipal Code (SMC); and enacting a new chapter 08.07E to Title 08 of the SMC.

**WHEREAS**, in 2023, the City established chapter 08.07D SMC titled “Sales and Use Tax Deferral Program for Affordable Housing” to address redevelopment of underdeveloped urban land consistent with chapter 82.92 RCW; and

**WHEREAS**, chapter 8.07D SMC allows for infill development of former surface parking lots for to create affordable housing; and

**WHEREAS**, in 2024, the Washington State Legislature enacted Senate Bill 6175, which provides qualifying cities the legislative authority to enact a sales and use tax deferral program to encourage redevelopment of underutilized commercial property located in urban areas; and

**WHEREAS**, the State of Washington’s sales and use tax is 6.5 percent, while the City of Spokane’s is an additional 2.5 percent, thus equaling a 9 percent sales and use tax; and

**WHEREAS**, the deferral amount is the entire 9 percent sales and use tax; and

**WHEREAS**, there are many existing buildings located in downtown centers near work and services where there is underutilized commercial property that can be redeveloped into affordable housing; and

**WHEREAS**, to encourage the redevelopment of underutilized commercial property in the downtown center, the City of Spokane may create a sales and use tax deferral program to align with Senate Bill 6175 and hereby does; and

**WHEREAS**, as required pursuant to Senate Bill 6175, the City Council adopted Resolution 2024-0066, the Resolution of Intent to establish this program, at the July 22, 2024 Legislative Session and notices for the August 12, 2024 hearing were published on \_\_\_\_\_, 2024 in the City of Spokane Official Gazette; and

**WHEREAS**, to align with chapter 82.92 RCW and avoid confusion within the SMC with the establishment of the new chapter 08.07E SMC, which will also create a sales and use tax deferral program for affordable housing, Chapter 08.07D SMC needs to be renamed to identify it is for the redevelopment of underdeveloped urban land.

**NOW THEREFORE**, the City of Spokane does ordain:

**Section 1.** That the title to chapter 08.07D of Title 08 of the Spokane Municipal Code is retitled as follows:

**Chapter 08.07D Sales and Use Tax Deferral Program for ((Affordable Housing)) Underdeveloped Urban Land Redevelopment**

**Section 2.** That there is enacted a new chapter 08.07E to Title 08 of the Spokane Municipal Code to read as follows:

**Chapter 08.07E Sales and Use Tax Deferral Program for Underutilized Commercial Property**

|                |  |
|----------------|--|
| SMC 08.07E.010 | Purpose and Intent                                   |
| SMC 08.07E.020 | Definitions  |
| SMC 08.07E.030 | Application Process                                  |
| SMC 08.07E.040 | Approval Process                                     |
| SMC 08.07E.050 | Appeals Process                                      |
| SMC 08.07E.060 | Application Fee                                      |
| SMC 08.07E.070 | Additional Requirements, Conditions, and Obligations |
| SMC 08.07E.080 | Annual Report  |
| SMC 08.07E.090 | Application to the Department                        |
| SMC 08.07E.100 | Voluntary Discontinuance                             |
| SMC 08.07E.110 | Transfer of Ownership                                |
| SMC 08.07E.120 | Multi-family Tax Exemption                           |
| SMC 08.07E.130 | Sunset   |

**Section 08.07E.010 Purpose and Intent**

The purpose of this chapter is to authorize a sales and use tax deferral program to assist the City of Spokane and increase more affordable housing units in targeted urban areas by incentivizing the redevelopment of underutilized commercial property in the urban core.

**Section 08.07E.020 Definitions**

As used in this chapter:

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.
  - C. "City" means the City of Spokane, acting through the Director of Community and Economic Development and/or the City Council, as provided in this chapter.
  - D. "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.
  - E. "Department" means the Washington State Department of Revenue.
  - F. "Director" means the Director of Spokane Department of Community and Economic Development or the Director's designee.
  - G. "Eligible investment project" means an investment project that is located in a city and receiving a conditional certificate of program approval.
  - H. "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.
  - I. "Household" means a single person, family, or unrelated persons living together.
  - J. "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.
    1. "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.
    2. If the investment project is a phased project, "initiation of construction" applies separately to each phase.
  - K. "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.

- G. "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.
- H. "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.
- I. "Owner" means the property owner of record.
- J. "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.

### **Section 08.07E.030 Application Process**

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:

- A. The owner must apply to the City in writing, on forms adopted by the Spokane Department of Community and Economic Development. The application must contain the following:
  - 1. Information setting forth the grounds supporting the requested deferral including information indicated on the application form or in the guidelines;
  - 2. A description of the investment project and site plan, and other information requested;
  - 3. A statement of the expected number of affordable housing units to be created;



4. 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;
  5. 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;
  6. 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
  7. A statement that the applicant would not have built in this location but for the availability of the tax deferral under this chapter.
- B. The applicant must verify the application by oath or affirmation; and
- C. The application must be accompanied by the application fee, if any, required under this chapter; and.
- D. The Director, with the approval of the Spokane City Council, may permit the applicant to revise an application before final action by the City on the application.

#### **Section 08.07E.040 Approval Process**

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

- A. (1) 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 (2) 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;
- B. 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;
- C. The investment project will occur on land that constitutes, at the time of application, underutilized commercial property;
- D. The area where the investment project will occur is located within an area zoned for residential or mixed uses;

- E. 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;
- F. The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW; and
- G. 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.;

#### **Section 08.07E.050 Appeals Process**

- A. The City must approve or deny an application filed under this chapter within 90 days after receipt of the application.
- B. If the application is approved, the City must issue the applicant a conditional certificate of program approval. The certificate must contain a statement by the Director of Community and Economic Development that the investment project as described in the application will comply with the required criteria of this chapter.
- C. 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.
- D. Upon denial of an application by the City, an applicant may appeal the denial to the City's Hearing Examiner within 30 days after receipt of the denial. The appeal before the Hearing Examiner 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.
- E. The decision of the City on appeal is final.

#### **Section 08.07E.060 Application Fee**

The City may establish an application fee. This fee shall not exceed an amount determined to be required to cover the cost to be incurred by the City in administering the program under this chapter and shall be reviewed and approved by the City Council on an annual basis. The application fee must be paid at the time the application for program approval is filed.

#### **Section 08.07E.070 Additional Requirements, Conditions, and Obligations**

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

1. 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;
  2. A statement of the new affordable housing to be offered as a result of the conversion of underutilized commercial property to multifamily housing; and
  3. A statement that the work has been completed within three years of the issuance of the conditional certificate of program approval.
- B. Within 30 days after receipt of the statements required under subsection (A) 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.
- C. The City must notify the conditional recipient within 30 days that a tax deferral under this chapter is denied if the City determines that:
1. The work was not completed within three years of the application date;
  2. The work was not constructed consistent with the application or other applicable requirements;
  3. The affordable housing units to be offered are not consistent with the application and criteria of this chapter; or
  4. The owner's property is otherwise not qualified for a sales and use tax deferral under this chapter.
- D. 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 Director, with the approval of the City Council, 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.
- F. In the event the City determines the conditional recipient is not entitled to a sales and use tax deferral under this Section 08.07D.080, the conditional recipient may appeal a decision by the City to the City's Hearing Examiner within 30 days after receipt of the denial. The appeal before the Hearing Examiner 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 conditional recipient may appeal a decision by the City's Hearing Examiner 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.

- G. Upon denial of the sales and use tax deferral by the City under this Section 08.07D.070, the City shall notify the Department, upon which taxes deferred under this chapter are immediately due and payable, subject to any appeal by the conditional recipient.

### **Section 08.07E.080 Annual Report**

- A. Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for ten years, the conditional recipient must file with the Director an annual report indicating the following:
1. A statement of the affordable housing units constructed in the property as of the anniversary date;
  2. A certification by the conditional recipient that the property has not changed use;
  3. A description of changes or improvements constructed after issuance of the certificate of occupancy; and
  4. Any additional information requested by the City.
- B. 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.
- C. In the event the City issues a certificate of program approval under this chapter, it shall report annually by December 31<sup>st</sup> of each year, beginning in 2025, to the Washington Department of Commerce the following information:
1. The number of program approval certificates granted;
  2. The total number and type of buildings converted;
  3. The number of affordable housing units resulting from the conversion of underutilized commercial property to multifamily housing; and
  4. 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.

### **Section 08.07E.090 Application to the Department**

- A. A conditional recipient must submit an application to the Department for a sales and use tax deferral 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 of Revenue in the 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.

### **Section 08.07E.100 Voluntary Discontinuance**

- A. 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.
- B. 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.
- C. This section does not apply after ten years from the date of the certificate of occupancy.

### **Section 08.07E.110 Transfer of Ownership**

- A. Transfer of investment project ownership does not terminate the deferral. The deferral is transferred subject to the successor meeting the eligibility requirements of this Section 08.07E and Chapter 82.\_\_\_\_RCW.
- B. The transferor of an eligible project must notify the City and the Department of such transfer, in writing and whereupon the City will certify to the Department whether 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 as provided in Chapter 82.\_\_\_\_RCW.

### **Section 08.07E.120 Multi-family Tax Exemption**

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 08.15 SMC and chapter 84.14 RCW. For applicants receiving the

property tax exemption under chapter 08.15 SMC and 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 08.15 SMC and chapter 84.14 RCW.

**Section 08.07E.130 Sunset**

This sales and use tax deferral program shall expire ten (10) years from the effective date of this ordinance.

**Section 3. Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or words of this ordinance.

**Section 4. Clerk Corrections.** Upon approval by the city attorney, the city clerk is authorized to make necessary corrections to this ordinance, including scrivener's errors, or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or renumbering or referencing of ordinances or their sections and subsections.

**ADOPTED** by the City Council on August 12, 2024.

Betsy J. Milkerson  
Council President

Attest:

Yvonne Hester  
City Clerk

Approved as to form:

[Signature]  
Assistant City Attorney

Lisa Brown  
Mayor

8/16/24  
Date

SEPT 15, 2024  
Effective Date

