

01/06/2025 (Date of First Reading)

01/13/2025 (Date of Public Hearing)

ORDINANCE NO. M-4493

AN ORDINANCE adopting a Construction Sales and Use Tax Deferral Program under chapter 82.92 RCW; enacting new section VMC 5.98.070; and providing for severability and an effective date.

WHEREAS, in 2022 the Washington State Legislature enacted Engrossed Second Substitute Senate Bill 5755, now codified as chapter 82.92 RCW, “to encourage the redevelopment of underdeveloped land in targeted urban areas, thereby increasing affordable housing, employment opportunities, and helping accomplish the other planning goals of Washington cities”; and

WHEREAS, chapter 82.92 RCW permits the City Council of the City of Vancouver “to ... 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 underdeveloped land and a lack of affordable housing in areas proximate to the land”; and

WHEREAS, the City Council finds that creating such a sales and use tax deferral program would further the City’s goals of increasing affordable housing, employment opportunities, and other planning goals; and

WHEREAS, as reflected in SR005-25, Staff recommends that the City Council create a Sales and Use Tax Deferral Program;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. A new section is enacted and added to chapter 5.98 VMC, to be codified at VMC 5.98.070, and shall read as follows:

5.98.070 Construction Sales and Use Tax Deferral

- A. **Purpose.** The City of Vancouver is experiencing high housing rental and ownership costs. The purpose of the Construction Sales and Use Tax Deferral (CSTD) program is to encourage housing development on underdeveloped property in targeted urban areas to increase affordable housing, employment opportunities, and help accomplish other city planning and livability goals. The CSTD program allows for a deferral on the sales and use taxes related to the development and building costs for constructing new housing projects that include an affordability component on underdeveloped surface parking lots within the city. This deferral is authorized under chapter 82.92 RCW.
- B. The definitions in this subsection apply throughout VMC 5.98.070 unless the context clearly requires otherwise:
1. **“Affordable homeownership”** means housing intended for owner occupancy for low or moderate-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30% of the household's monthly income.
 2. **“Affordable rental housing”** means housing intended for very low or low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30% of the household's monthly income.
 3. **“Applicant”** means an owner of underdeveloped property.
 4. **“Conditional recipient”** means an owner of underdeveloped property granted a conditional certificate of program approval, which includes any successor owner of the property.

5. **“County median sales price”** means the most recently published quarterly data of median home prices by the Washington Center for Real Estate Research. (wcrer.be.uw.edu).
6. **“CSTD”** means Construction Sales and Use Tax Deferral.
7. **“Eligible investment project”**: means an investment project that is located in a city and receiving a conditional certificate of program approval.
8. **“Fair market rent”** means the estimates of 40th percentile gross rents for standard quality units within counties as published by the federal department of housing and urban development.
9. **“Household”** means a single person, family, or unrelated persons living together.
10. **“Initiation of construction”** means the date that a building permit is issued under the building code adopted under RCW 19.27.031 and VMC Title 17 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. 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. If the investment project is a phased project, initiation of construction applies separately to each phase.
11. **“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.
12. **“Low-income household”** means a single person, family, or unrelated persons living together whose adjusted income is more than 50% but is at or below 80% of the median family income adjusted for family size, as reported by the United States department of housing and urban development.
13. **“Moderate-income household”** means a single person, family, or unrelated persons living together whose adjusted income is more than 80% but is at or below 115% of the median family income adjusted for family size, as reported by the United States department of housing and urban development.

14. **“Multifamily housing”** means a building or a group of buildings having two or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing.
15. **“Owner occupied”** means when a person who holds the title (or owns the property) uses the home as their primary residence more than six months out a calendar year.
16. **“Underdeveloped property”** means land used as a surface parking lot for parking of motor vehicles off the street or highway, that is open to public use with or without charge, as of June 9, 2022.
17. **“Very low-income household”** means a single person, family, or unrelated persons living together whose adjusted income is at or below 50% of the median family income adjusted for family size, as reported by the United States department of housing and urban development.

C. **Program Approval Requirements.** In order for the city to grant approval of the tax deferral the following criteria shall be met:

1. The applicant must be the property owner, and the CSTD application must be received by the Department of Revenue before initiation of construction.
2. The subject property must meet the definition of underdeveloped property and be located in an area zoned for residential or mixed-use development.
3. The project site cannot be acquired through condemnation.
4. The project must be for multi-family housing of either affordable rental or owner-occupied affordable homeownership.
5. A minimum of 50% of the new units in the project must be affordable to low or moderate-income households.
6. The affordable rental units must be leased to very low or low-income households (up to 80% AMI) whose monthly housing costs, including utilities other than telephone, do not exceed 30% of the household's monthly income. This information is updated annually on the city's housing program webpage.
7. The affordable homeownership units must be sold as owner occupancy to low or moderate-income households (up to 115% AMI) whose monthly housing costs, including basic essential utilities (excluding phone and cable services), do not exceed 30% of the household's monthly income.

This information is updated annually on the city's housing program webpage.

8. If the project is mixed use, only the bottom floor of the project can be utilized as commercial space.
9. If approved, the applicant must enter an agreement with the City of Vancouver to implement the development and comply with any additional conditions contained in that agreement.
10. Construction must be completed (issued an occupancy permit) within three years of receiving the certificate of conditional tax deferral. The city may also grant a one-time two-year extension.
11. The project must comply with all building codes, zoning, and other applicable regulations.

D. Conditional Certificate Application Process

1. *Complete Application Submittal.* Applications must be submitted by the property owner and must be submitted to both the city and Department of Revenue prior to the initiation of construction. Applications will be reviewed for completeness upon submission and application fee payment. Once a complete application is received the city appointed review committee must approve or deny the application within 90 days. Tax deferral application review times do not include land use, engineering or building permit processing timelines of other city departments associated with the development process. The applicant is responsible to coordinate with the city development review teams on other associated project timelines. The city may request and permit the applicant to revise an application before final action of the application review committee. A complete application shall include:
 - a. A city provided application form signed by the property owner;
 - b. Information describing the justification for supporting the requested deferral including information indicated on the application form or in the guidelines;
 - c. Application fee of \$5,000 plus \$75 dollars per housing unit;
 - d. A description of the investment project including the number, type and size of units being constructed;
 - e. Site plan, floor plans, elevation and other applicable project drawings;
 - f. A construction budget and project proforma;

- g. An estimated construction timeline;
 - h. A statement that the applicant is aware of the potential tax liability involved if the investment project ceases to be used for eligible uses;
 - i. A statement that the applicant is aware that the investment project must be completed and receive a certificate of occupancy within three years from the approval date of the conditional certificate application;
 - j. 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
 - k. A statement that the applicant would not have built in this location without the availability of the CSTD tax deferral;
2. *Conditional Certificate Approval Criteria.* The city application review committee may approve the application and grant a conditional certificate of program approval if it finds that:
- a. The applicant is the legal property owner, and the application is received before initiation of construction;
 - b. The investment project will occur on land that constitutes underdeveloped property;
 - c. The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW;
 - d. The area where the investment project will occur is located within an area zoned for residential or mixed uses;
 - e. For mixed-use projects, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units;
 - f. The project consists of new multi-family housing of either affordable rental or owner-occupied affordable homeownership.
 - g. A minimum of 50% of the new units in the project must be affordable to low or moderate-income households where:
 - i. The affordable rental units must be leased to low or low-income households (up to 80% AMI) whose monthly housing costs, including utilities other than telephone, do not exceed 30% of the household's monthly income. This information is updated

annually on the city's housing program webpage. During the deferral period the affordable rental units must be rented at a price at or below fair market rent for Clark County as published by the federal department of housing and urban development.

- ii. The affordable homeownership units must be sold to owner occupancy, low or moderate-income households (up to 115% AMI) whose monthly housing costs, including basic essential utilities (excluding phone and cable services), do not exceed 30% of the household's monthly income. This information is updated annually on the city's Housing Program website. During the deferral period the affordable homeownership units must be sold at a price at or below the county median price.
- h. The investment project is, or will be, at the time of completion, in conformance with RCW 82.92 and all local plans and regulations that apply at the time the application is approved.

3. *Conditional Certificate Application Decision and Appeals Process*

- a. The conditional certificate application review committee must issue an approval or denial of an application, to be confirmed by City Council through resolution, within 90 days after receipt of a complete application.
- b. If approved, the applicant must enter an agreement with the City of Vancouver to implement the development and comply with any additional conditions contained in that agreement.
- c. Following the execution of the agreement, the city will issue the applicant a conditional certificate of program approval attesting that the investment project can comply with the required criteria of this section. The certificate shall be recorded with the Clark County Auditor at the applicant's expense.
- d. If the application is denied, the application review committee 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.
- e. Upon receiving a denial, an applicant may appeal the denial decision to the City Council. The appeal 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 Council on the appeal is final.

4. *Department of Revenue Conditional Certificate Review and Approval.* Following the conditional certificate approval by the city the conditional recipient must submit an application to the Washington State Department of Revenue (DOR) before initiation of construction on the project. In the case where an investment project involves multiple qualified buildings, separate 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 a form and manner prescribed by the Department of Revenue. The Department of Revenue application must include:

- a. a copy of the conditional certificate of program approval issued by the city;
- b. estimated construction costs;
- c. time schedules for completion and operation;
- d. a waiver by the conditional recipient of the four-year limitation on assessment or correction of taxes under RCW 82.32.100; and
- e. any other information required by the Department of Revenue.

After the conditional recipient submits the conditional certificate of program approval issued by the city to the Washington State Department of Revenue, 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, and 82.14 RCW on each eligible investment project within 60 days.

When approved, DOR will 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. The conditional certificate for deferred sales and use tax is valid during active construction of the project.

E. **Post Conditional Certificate Issuance.** The investment project must be completed and receive a certificate of occupancy from the City Building Official within three years from the date of approval of the conditional certificate application approval or any applicable extension date;

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 detailed description of the work completed;

- b. A statement that the project has been completed within three years of the issuance of the conditional certificate of program approval and any extension if applicable;
 - c. A statement explaining how the project will meet the affordability requirements under this section;
 - d. A copy of the certificate of occupancy for each eligible structure;
 - e. A statement of the total expenditures made with respect to the entire project; and
 - f. A statement of expenditures spent for the project as a whole and for each individual multi-family housing unit.
2. Within 30 days after receipt of the statements required under subsection (1)(a)-(1)(f) of this section, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing units offered are consistent with the application and the contract agreement approved by the city, and that the investment project continues to qualify for a tax deferral.
3. 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 city may extend the deadline for completion of the work for a period not to exceed 24 consecutive months from the expiration date of the conditional certificate.
4. If the city notifies the conditional recipient that the completed project is compliant with certificate approval criteria, then the conditional recipient must notify the Department of Revenue within 30 days from receiving the city's post construction determination to schedule an audit of the deferred taxes. The Department of Revenue must determine the total 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.
5. If, post construction, the city notifies the conditional recipient that the project is not compliant with the conditional certificate approval criteria and does not qualify for the deferral of sales and use taxes the conditional recipient may appeal the 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 of the denial to the conditional recipient.

6. If the denial of the sales tax deferral is confirmed through the superior court, the city must notify the Department of Revenue and the taxes deferred under this section are immediately due and payable. The department of Revenue must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

- F. **Annual Reporting.** All projects will be reviewed annually during the deferral period to ensure continued compliance with program requirements. Reporting must be completed by the property owner and submitted to the city annually during the 10-year conditional deferral period. A \$500 fee for compliance monitoring is required annually with the monitoring report.

Annual reports must be provided on the city provided form and include a notarized statement of continued compliance with program regulations. Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for 10 years, the property owner must file with the city an annual report including the following:

1. Project owner name;
2. Project address and name;
3. Total number of units;
4. Total number of affordable rental units;
5. For each unit:
 - a. Unit number;
 - b. Unit size;
 - c. Number of bedrooms;
 - d. Indicate rental or owner occupied;
 - e. Indicate designated affordable unit;
 - f. Monthly rent payment;
 - g. List of utilities included in the rent;
 - h. List of utilities paid by tenant;
 - i. Utility allowance amounts;
 - j. Household gross income (individuals over 18 years of age);
 - k. Household size;
 - l. Sales price for owner-occupied units (if applicable);

6. A certification that the property has not changed use;
7. A description of any improvements or changes (excluding maintenance) constructed after issuance of occupancy permit.

Nothing in this subsection alters a conditional recipient's reporting obligations to the Department of Revenue, or the City's reporting obligations to the Department of Commerce, all of which is required by RCW 82.92.080.

- G. **Withdrawal or Non-compliance.** If a conditional recipient voluntarily opts to discontinue compliance with the requirements of this section, the recipient must notify the city and Department of Revenue within 60 days of the change in use or intended discontinuance. If, after the Department of Revenue 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 section, the city must notify the certificate recipient by certified mail. The property owner may appeal the determination by filing a notice of appeal with the city clerk within 30 days, specifying the factual and legal basis for the appeal. The city council will conduct a hearing at which all affected parties may be heard and all competent evidence received. The city council will affirm, modify, or repeal the decision to cancel the deferral based on the evidence received. An aggrieved party may appeal to the Clark County Superior Court under RCW 34.05.510 through 34.05.598, if the appeal is filed within 30 days of the city council's decision.

If the cancellation of the certificate is confirmed the city shall notify the Department of Revenue and all deferred sales and use taxes are immediately due and payable. The department of revenue must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

- H. **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 section. The transferor of an eligible project must notify the city and the department of Revenue of such transfer. The city must certify to the department of revenue that the successor meets the requirements of the deferral. The transferor must provide the information necessary for the department of revenue 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 and penalties retroactively to the date of deferral.

- I. **Duration of Deferral.** The certificate of conditional tax deferral is valid during active construction. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, the deferred sales and use taxes need not be repaid.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

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Section 3. Effective date. This ordinance shall become effective 30 days after passage.

DATE OF FINAL PASSAGE at a Regular Meeting of the Vancouver City Council:

January 13, 2025.

SIGNED this 13th day of January, 2025.

DocuSigned by:
Anne McEnerny-Ogle
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Anne McEnerny-Ogle, Mayor

Attest:

DocuSigned by:
Natasha Ramras
493E940414AE4BD...
Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:
Nena Cook
A17C8F7FA2AC4D4...
Nena Cook, Interim City Attorney

SUMMARY

ORDINANCE NO. M-4493

AN ORDINANCE adopting a Construction Sales and Use Tax Deferral Program under chapter 82.92 RCW; enacting new section VMC 5.98.070; and providing for severability and an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).