

Discussion Draft

Overview of Changes to the Multifamily Housing Tax Exemption Program

Introduction

In 2021, [SB 5287](#) made substantial changes to the Multifamily Housing Tax Exemption (MFTE) Program.¹

Washington state adopted the program in 1995, and it has been amended several times since. The Legislature intends to achieve multiple goals through these changes by:

- Incentivizing the development of multiple-unit housing including creating additional affordable housing;
- Encouraging urban development and density;
- Increasing market rate workforce housing;
- Developing permanently affordable housing opportunities;
- Promoting economic investment and recovery; and
- Creating family-wage jobs.²

For more information, please contact:

Mary Reinbold, AICP
mary.reinbold@commerce.wa.gov
509.638.5449

¹ The program, nicknamed the MFTE program, is codified in RCW 84.14 as “New and Rehabilitated Multiple-Unit Dwellings in Urban Centers”

² RCW 84.14.005(2)

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What is the Multifamily Housing Tax Exemption and Why Does it Matter?

The Multifamily Housing Tax Exemption (MFTE) is a tax incentive for the purpose of expanding available housing and affordable housing within designated areas. It encourages the development of multifamily housing in designated “residential target areas”³ by exempting the value of new housing construction, conversion or rehabilitation from property taxes. However, the exemption does not apply to the value of the property itself or non-residential improvements to the property. A local government may choose to offer an eight, 12-, or 20-year tax exemption. Twelve and 20-year programs must require that a certain percentage of the housing be affordable to low or moderate income households.

A 2019 study⁴ showed that since formation of the MFTE incentive in 1995, 424 developments received a tax exemption, and 34,885 new housing units were produced. Of these units, 21% are designated as affordable, while Renton, Seattle, Spokane, and Tacoma produced 82% of the new housing units overall.

Overview of Recent Legislative Changes

The 2021 Legislature amended the MFTE program through [SB 5287](#). In the sections that follow, we will walk you through the revisions and spotlight opportunities to increase the supply of housing and affordable housing.

Extension for completion of MFTE projects delayed by COVID-19

Applicants have three years to complete MFTE buildings, with the option to extend the completion timeline an additional 24 months. To mitigate delays associated with COVID-19, for applicants that submitted prior to February 15, 2020, local governments may choose to extend the completion deadline for an additional five years. The five-year extension would begin immediately following the completion of any outstanding applications or previously authorized extensions, whichever is later.⁵

Smaller jurisdictions now eligible to offer tax exemptions

Until 2021, only the largest jurisdictions in Washington were able to offer an MFTE program. In 2021, the legislature provided that until December 31, 2031, any city that was not already eligible could offer the following MFTE programs:

- A 12-year exemption where the applicant must commit to renting or selling at least 20 percent of the multifamily housing units as affordable housing units to low and moderate-income households, and any additional income eligibility conditions adopted by the local government, and the area must be zoned to have an average minimum density equivalent to 15 dwelling units or more per gross acre.⁶

³ A residential targeted area must be within an urban center or urban growth area. Urban centers are defined by RCW 84.14.010 to mean a compact identifiable district where urban residents may obtain a variety of products and services. It must contain several businesses that may include but are not limited to shops, offices, banks, restaurants, or governmental agencies; adequate public facilities, including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and a mixture of uses and activities that may include housing, recreation, and cultural activities in association with commercial or office use.

⁴ JLARC (2019) Tax preference. Retrieved August 11, 2021 from https://leg.wa.gov/jlarc/taxReports/2019/MFTE/f_ii/default.html

⁵ RCW 84.14.090(5)

⁶ RCW [84.14.020](#)(1)(a)(iii)

- A 20-year exemption, where at least 25 percent of the units must be sold to a qualified nonprofit or local government partner that will assure permanent affordable homeownership. The remaining 75 percent of units may be rented or sold at market rates.⁷

A 12-Year extension for existing MFTE projects⁸

Before 2021, the MFTE program had two options for qualifying local governments:

- **An eight-year program:** intended to incentivize the development of multifamily housing for rent or ownership in areas that cities designate as needing a greater diversity of housing, specifically multiunit housing. Affordable housing is not mandatory, but local governments may require affordable housing and other public benefits. The local government may determine the level and duration of affordability.⁹
- **A 12-year program:** intended to increase the supply of affordable housing in rental and ownership housing. A minimum of 20% of units must be affordable to low- and moderate-income households for rental, or moderate-income households for units intended exclusively for owner occupancy.¹⁰ The level of affordability may be specified by the local government, and may be further detailed by unit size.

With SB 5287, MFTE projects may be extended for an extra 12 years for eight- or 12-year programs that have existing property tax exemptions that are within 18 months of expiration.¹¹ This action requires city or county approval. Multifamily housing, for which a continuing 12-year exemption is approved, must include 20% of units as affordable units for low-income households, and should no longer include provisions for moderate-income in the 20% affordable units.¹² Eight-year projects must convert to 12-year programs and include 20% of units as affordable units.

Requirements for buildings that received extensions. Applicants must provide notice to tenants in rent-restricted units at the end of the tenth and eleventh years of the continued 12-year exemption that the exemption will expire and the landlord will provide relocation assistance. Landlords must provide one month's rent as relocation assistance to a qualified tenant in their final month when affordability requirements no longer apply, even when the affordable rent period extends beyond the expiration of the tax exemption. New extensions are not permitted after January 1, 2046. This program is currently time-limited but may be extended if a JLARC review demonstrates that the 12-year extension is well-used.¹³

New, 20-year exemption for permanently affordable ownership housing¹⁴

Until January 1, 2032, local governments may offer a 20-year property tax exemption if 25% of the units are sold as "permanently affordable" to households earning 80% area median income (AMI) or less. The other units may be rented or sold at market rates. The jurisdiction may charge a fee to cover administrative fees to manage the units. The development must be sponsored by a non-profit or governmental entity, and is subject to a 99-year resale restriction to ensure permanent affordability. Note the following specifications based on the entity offering the exemption:

⁷ RCW [84.14.021](#)(1)(b)

⁸ RCW [84.14.020](#)(6)

⁹ RCW [84.14.020](#)(1)(a)(ii)(A)

¹⁰ RCW [84.14.020](#)(1)(a)(ii)(C)

¹¹ Commerce assumes this means projects that are within 18 months before expiration of the tax exemption, so that there would be time for new contracts to be negotiated.

¹² As this component of the program is intended to prevent displacement when a tax exemption ends, building owners are not required to evict moderate-income tenants with the new certificate, but must ensure that new tenants meet the new criteria.

¹³ RCW [84.14.020](#), see notes, Tax preference performance statement- 2021 c 187§3

¹⁴ RCW [84.14.021](#)

- Previously eligible local governments may offer the new 20-year MFTE program and may develop terms that are consistent with RCW 84.14.021(1)(a).
- Newly eligible jurisdictions (under 20,000) must include density requirements of at least 15 dwelling units per acre consistent with RCW 84.14.021(1)(b).
- Certain cities, such as Shoreline or Bothell, which are along transit lines and have an inclusionary zoning program, are to refer to RCW 84.14.020(1)(a)(ii)(C).

Permanently affordable homeownership units or permanently affordable rental units must be sold or rented to households earning no more than 80 percent of the area median income for the city or local jurisdiction in which the unit is located. A local jurisdiction may assign and collect an administration fee at each point of sale to cover the administrative costs for oversight of the program to maintain permanently affordable housing units.

For purposes of the 20-year exemption, "**permanently affordable homeownership**" is defined as homeownership that, in addition to meeting the definition of "affordable housing" in RCW 43.185A.010, is:

- a) Sponsored by a nonprofit organization or governmental entity;
- b) Subject to a ground lease or deed restriction with a duration of at least 99 years at the initial sale and with each successive sale that includes:
 - i. A resale restriction designed to provide affordability for future income-qualified homebuyers;
 - ii. A right of first refusal for the sponsor organization to purchase the home at resale; and
 - iii. A requirement that the sponsor must approve any refinancing, including home equity lines of credit; and
- c) The sponsor supports homeowners and enforces the ground lease or deed restriction.

Commerce will provide a template for permanently affordable housing for home or condo ownership through deed restrictions that can be used by a city or local government to ensure compliance. Local governments and their partners may use this template as a basis for their local contracts.

More revised definitions for your code

SB 5287 revised the definitions of several key MFTE terms.

"City" is revised to add subsection d) below.

- a) A city or town with a population of at least 15,000.
- b) The largest city or town, if there is no city or town with a population of at least 15,000, located in a county planning under the growth management act.
- c) A city or town with a population of at least 5,000 located in a county subject to the provisions of RCW 36.70A.215 (Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties).
- d) NEW: Any city that otherwise does not meet the qualifications under (a) through (c),¹⁵ until December 31, 2031. These cities may offer:
 - i. A 12-year exemption, subject to certain criteria, mainly that the density is 15 units per gross acre, and at least 20% of the units must be rented or sold to low- or moderate-income households.¹⁶

¹⁵ RCW 84.14.010(3)(d)

¹⁶ RCW 84.14.020(1)(a)(iii), may be offered until Dec 31, 2026

- ii. A “Permanently affordable housing” program until December 31, 2031. Residential improvements are exempt for 20 years and at least 25% of the units must be sold to a non-profit or local government partner that will assure permanent affordable home ownership to homeowners at 80% AMI or below. The remaining 75% of units may be rented or sold at market rates.¹⁷

NOTE: Any city that was already authorized to offer an MFTE program may offer the new 20-year program. However, the new cities under part d. may only offer the 12- and 20-year programs as listed above. New cities are only granted temporary authority to offer the program, unless a state review shows increasing and compliant use of the 20-year program.

“**County**” is revised to mean counties with an unincorporated population of at least 170,000, which means that Clark, King, Kitsap, Pierce, and Snohomish counties may now offer an MFTE program.¹⁸

“**High cost areas**” are removed from the program. This previously allowed a higher rent limit for “affordable” units.¹⁹ Any community that currently offers a 12-year property tax exemption based on being a “high cost” area, must remove this provision, and revert to low and moderate income, or in the case of permanently affordable housing, only low income. Any new conditional certificates should not be based on “high cost” rents. Any projects that are completing should be based on the agreement in the conditional certificate, or may offer new regulations to the applicant at the time of the final certificate.

“**Multiunit housing**” revised to be “a building or a group of buildings.” This changes the statute so that units that are not required to be part of a large building. However, they must still meet the definition of multifamily or multi-unit housing, which may include duplex, triplex, townhouse, row house or cottage housing, where the development contains at least four units. Commerce suggests that a city require minimum densities to be sure the meet the legislative goals of increased variety of residential opportunities within urban centers, and encouraging development and density. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing. The program still does not apply to transient accommodations or hotels and motels.

“**Low and moderate income households**” is revised to require area median income (AMI) for the county, city or metropolitan statistical area where the project is located. Cities, for which AMI reports are available, should review both city and the county median family income, and choose the value that meets local goals, such as aligning with other affordability programs, or addresses regional housing issues. The [Washington Center for Real Estate Research Housing Market Data Toolkit](#) provides city specific median income data under RCW 36.70A.610. Commerce will also provide links to available data.

Additional criteria for counties to set residential target areas²⁰

Counties that choose to designate transit-oriented residential target areas (RTAs)²¹ may do so until July 15, 2024. Any counties designating RTAs must evaluate displacement risk of people living in the potential RTAs. The area can only be designated as a RTA if the displacement risk is minimal or mitigated by locally adopted

¹⁷ RCW 84.14.021(1)(b)

¹⁸ RCW 84.14.010(4)

¹⁹ “High cost area” was defined as a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

²⁰ RCW 84.14.040

²¹ RCW 84.14.040(1)(d)(iii) is specific about the area, “that is located within a designated urban growth area and within 0.25 miles of a corridor where bus service is scheduled at least every thirty minutes for no less than 10 hours per weekday and is in service or is planned for service to begin within five years of designation.”

mitigation measures, which may include offering first right of refusal of new MFTE units to those at risk of displacement.

Local governments may choose to add contracting requirements

Local governments may impose additional contracting requirements on MFTE projects, such as prevailing wage, payroll record requirements, apprenticeship, or inclusionary contracting.²²

Reporting to Commerce

Reports to Commerce are now due by April 1 following the year final certificates are issued.²³ This allows sufficient time for county assessors to provide updated assessments. Reporting requirements have been slightly amended to improve accountability, and the following information must be submitted to Commerce each year, for MFTE projects that were finalized in the previous year.²⁴ Reporting requirements include:

1. The number of tax exemption certificates granted.
2. The total number and type of units produced.
3. The number, size, and type of units produced meeting affordable housing requirements.
4. The development cost of each unit produced.²⁵
5. The total monthly rent or total sale amount of each unit produced, affordable and market rent.
6. The annual income and household size of each renter household for each of the affordable units.²⁶
7. The value of the property tax exemption for each project.

A city or county must be in compliance with the reporting section to offer MFTE certificates.

Future Commerce Work Plan for the MFTE Program

The 2021 legislative session brought significant resources to Commerce to implement the MFTE program, along with a significant task list (see Table One below).

- The [State Operating Budget](#) (Section 111, Page 69) provides funding for Commerce to conduct a study and report to the legislature on city and county implementation of the multifamily housing property tax exemption.
- [SB 5287](#) requires Commerce to develop guidance on the program, develop a template for permanently affordable units, and develop and implement an auditing system.

Commerce intends to hire a consultant to implement much of this work. The consultant will work with a technical advisory committee composed of local government MFTE program administrators and other stakeholders. The study and recommendations are to be completed by June of 2023. The work includes:

- 1) Developing guidance for local governments on the MFTE program, identifying areas where further clarification and study is needed;
- 2) Conducting the study, which may be further scoped by a technical advisory committee; and

²² RCW 84.14.040 (6)

²³ RCW 84.14.100

²⁴ Annual forms will be available on the Commerce site. Any local government that fails to report to Commerce may not offer new MFTE certificates.

²⁵ Commerce will provide guidance on how to estimate the development cost.

²⁶ Commerce will also provide guidance on how to gather this data as projects are still leasing up in the first year.

3) Recommending changes to statute (both technical corrections and substantive amendments).

Commerce is providing this brief overview of 2021 changes and anticipates providing the following items required by SB 5287.

Table One: Commerce Task List to Support the MFTE Program

Commerce Task List	Anticipated Timeline
Develop a template for permanently affordable housing.	Winter 2022
Provide detailed guidance to cities and counties on managing MFTE programs and reporting requirements within them.	Summer 2022
Conduct a required study of the MFTE program.	Winter 2022
Design and implement a plan for auditing or reviewing the number of units at rents the applicant intends to offer.	Spring 2023