



## City of Port Orchard Council Work Study Session

### September 19, 2023

### 6:30 p.m.

#### Mayor:

Rob Putaansuu  
Administrative Official

#### Councilmembers:

Mark Trenary (Mayor Pro-Tempore)  
E/D & Tourism Committee, **Chair**  
Utilities/Sewer Advisory Committee  
Transportation Committee  
KRCC-alt

Shawn Cucciardi  
Finance Committee  
E/D & Tourism Committee  
Lodging Tax, **Chair**

Fred Chang  
Economic Development & Tourism Committee  
Land Use Committee  
Transportation Committee

Jay Rosapepe  
Finance Committee,  
Land Use Committee  
KRCC, PSRC-alt, PSRC Transpol-alt, KRCC Transpol  
alt, KRCC Planpol-alt,

John Clauson  
Finance Committee, **Chair**  
Utilities/Sewer Advisory Committee  
Kitsap Public Health District-alt

Cindy Lucarelli  
Festival of Chimes & Lights Committee, **Chair**  
Utilities/Sewer Advisory Committee, **Chair**  
Kitsap Economic Development Alliance

Scott Diener  
Land Use Committee, **Chair**  
Transportation Committee

**Department Directors:**  
Nicholas Bond, AICP  
Development Director

Denis Ryan  
Public Works Director

Tim Drury  
Municipal Court Judge

Noah Crocker, M.B.A.  
Finance Director

Matt Brown  
Police Chief

Brandy Wallace, MMC, CPRO  
City Clerk

#### Meeting Location:

Council Chambers, 3<sup>rd</sup> Floor  
216 Prospect Street  
Port Orchard, WA 98366

#### Contact us:

(360) 876-4407  
cityhall@portorchardwa.gov

*Pursuant to the Open Public Meetings Act, the City Council is conducting its public meeting in the Council Chambers at City Hall. Members of the public may view and provide public comment during the meeting in person at City Hall, via the online platform zoom (link below), or via telephone (number below). The public may also view the meeting live on the City's YouTube channel.*

#### Remote access

**Zoom Link:** <https://us02web.zoom.us/j/84859998382>

**Zoom Webinar ID:** 848 5999 8382

**Zoom Call-In:** 1 253 215 8782

#### Guiding Principles

- Are we raising the bar?
- Are we honoring the past, but not living in the past?
- Are we building connections with outside partners?
- Is the decision-making process positively impacting diversity, equity, and inclusion?

#### CALL TO ORDER

#### Pledge of Allegiance

#### 1. Multi-Family Tax Exemption (Bond) Page 2

Estimated Time: 60 minutes

#### 2. Limited Tax General Obligation (LTGO) Bond Delegation Ordinance (Crocker) Page 42

Estimated Time: 30 minutes

#### 3. Council Policy Regarding Bond/Levy Endorsements (Archer) Page 66

Estimated Time: 15 minutes

#### 4. Orchard Street Plaza Concepts (Mayor) Page 76

Estimated Time: 15 minutes

#### Good of the Order



## City of Port Orchard Work Study Session Executive Summary

---

**Issue Title:** Multi-Family Tax Exemption

**Meeting Date:** September 19, 2023

**Time Required:** 60 Minutes

**Attendees:** Nicholas Bond, AICP

**Action Requested at this Meeting:** Discuss the Housing Action Plan, Staff, and Land Use Committee recommendations for the City's MFTE program.

**Issue:** State law has provided authority for cities to offer multi-family tax exemptions since 1995 pursuant to RCW 84.14. Since 2016, the City has offered a multi-family tax exemption program to incentivize the production of multi-family housing types. The City's adopted Multifamily Tax Exemption (MFTE) program exempts certain new, converted or rehabilitated multifamily developments from ad valorem property taxation (i.e. improvements to vacant land, or to existing buildings) for either eight or 12 years from issuance of the certification of exemption, depending on whether a project will include at least 20% affordable housing. As explained in a recent Department of Commerce report linked below, the program works (and impacts the city and junior taxing districts) in one of two ways, depending on the practices of the County Assessor. It is staff's understanding that in Kitsap County, the assessor applies a property tax shift as described in the report from the Department of Commerce.

<https://deptofcommerce.app.box.com/s/9ig7p2ebm467ddpmb1c5u3d4ei22cs1n>

Since 2016, the legislature has revised and expanded the MFTE statute providing cities with more tools to encourage the construction of multi-family housing and affordable housing. In addition, the City completed a Housing Action Plan (HAP) in June 2023 which looked at these tools and the City's program and provided recommendations for consideration. The Land-Use Committee discussed the MFTE program in 2022 and recently at their July 2023 meeting and thus far, there is no consensus for next steps, other than not to proceed with a few recommendations from the HAP that the Committee felt should not advance at this time. The Land Use Committee recommended a discussion of the issue with the full City Council.

**Background:** The MFTE program, as authorized in state law, was designed to address the shortage of housing, including affordable housing units, and to meet the growing demand for housing in urban centers. The program works by increasing housing supply and in Port Orchard, it is likely having a positive impact to slow or reverse the rate of rising rents. Since 2016, the City has seen a boom in apartment construction. In this time, the City has approved five MFTE agreements for projects that will provide 442 residential apartments. Of the MFTE approvals, two of the projects accounting for 97 units reserved 20% of units as affordable housing. Recent data received in an appraisal report showed that in Q4 of 2022, market rents in our area decreased for the first time in a decade, by about 3.8%. While rents have increased significantly overall during the past decade, we are seeing for the first time that the

increase in housing supply may be starting to stabilize and even reduce rents in Port Orchard. If Port Orchard and our region continues to add population without building additional housing supply, rents will certainly continue to increase due to increasing demand for housing.

Since 2016, Port Orchard has seen 521 multi-family housing units constructed. Another 656 units are currently under construction and 497 units are in review for permitting or have been approved but are not yet under construction. This additional construction is likely to stabilize or even reduce rents in Port Orchard in the near term. The projects are also benefitting the City through the payment of one-time development fees including traffic impact fees, park impact fees, water capital facility charges, sewer general facility fee chargers as well as by contributing to the City's REET and sales tax revenues. These revenues allow the City to make investment in infrastructure improvements. Projects like the Bethel Road Corridor Improvements, the Marina Sewer Lift Station, the Community Event Center, and Downtown Waterfront Plaza are partially funded using these revenues from new growth.

Every project is unique in terms of the costs of development. Some multi-family projects being constructed are being built without MFTE incentives while others are receiving the incentive. It is likely that some of the projects in permitting would not be economically viable without the incentive, while others do not require the incentive because the site development costs, or other factors are low. In many cases, developers are required to construct offsite public utility or road improvements as a condition of permitting, saving the City money in the long run.

The City has been studying its MFTE program for over a year. Previous efforts to amend Port Orchard Municipal Code (POMC) Chapter 3.48 were put on hold pending changes being considered by the legislature and pending the preparation of a HAP for Port Orchard. The City's HAP was completed in June of 2023. Section 5.1 of the Housing Action Plan provides an overview of the City's existing program along with recommendations for future consideration.

<https://portorchardwa.gov/housing-action-plan/>

The alternatives section of this staff report describes the suggested changes as found in the HAP well as changes proposed by City staff.

**Alternatives:** Due to the varying opinions and concerns about the MFTE program, the City Council should first decide whether it wants to continue with the program at all. If the City Council wishes to retain the program, a discussion should occur about the purpose of the program and the types of tax exemptions that should be available. If certain exemptions are to continue, there needs to be a discussion of where the exemption should apply within the City. Finally, there are other recommendations in the HAP that should be discussed including height bonuses, how affordable units are distributed in a project, and other minor amendments.

- 1. Affordable Housing (with transit access).** The City's code currently provides a Type 1 Exemption that applies to projects which provide 20% of the units within the project as affordable housing. Under the existing program, the Type 1 Exemption has a term of 12 years and at the end of the term, the units may revert to market rate rents. Rents are required to be 10% below market rent and are reserved for households below specific income levels depending on the unit type (1-bed, 2-bed, etc.). Prior to preparing the HAP, the Land Use Committee discussed minor changes to this section that would have reduced the rents on affordable units to be 20% to 25% below market rate. Market rent data can be viewed here:

<https://www.huduser.gov/portal/datasets/fmr.html#year2023>

Subsequent to discussions with the Land Use Committee, changes to state law have been made to allow an extension to existing 12-year tax exemptions to preserve affordable housing units as well as a new 20-year exemption that is available for projects that provide permanent affordable housing.

In July 2023, the Land Use Committee indicated that they did not want to pursue either of these new options in state law due to the complexity of administering the affordable housing tax exemption but did suggest that these options be discussed with the full City Council. It should be noted that the existing affordable housing tax exemption is the most staff intensive of the MFTE types due to the tracking and reporting requirements associated with the program. The HAP in section 3.3 suggested that the City consider adding a Housing Coordinator position in part to administer the affordable housing tax exemption.

2. **Redevelopment Areas.** When the City initially launched the MFTE program, there were numerous underutilized or vacant commercial buildings in Port Orchard. The City wanted to offer a no-strings attached eight-year tax exemption to encourage redevelopment. Economic conditions in Port Orchard have changed somewhat since then, but there are still some blighted or underutilized areas of the city that could benefit from this incentive.
3. **Mixed-Use Development (with structured parking or transfer of development rights).** The HAP contains numerous recommendations for how to amend the Type 3 Exemption due to the complexity of how the City is targeting mixed-use development.
  - a. **Use Minimum Density.** The HAP correctly points out that development at 40-50 units per net acre by default must provide structured parking. At the building heights available in Port Orchard, a site cannot provide this number of units without providing structured parking. This Type 3 mixed-use exemption currently in POMC 3.48 includes much more complicated to administer standards requiring that a percentage of parking be within the footprint of the building or requires participation in a height bonus program, or participation in the never used Transfer of Development Rights program.
  - b. **Target incentive in downtown and mixed-use centers.** In previous discussions with the Land Use Committee, there has been discussion of limiting the mixed-use exemption to projects located in downtown or possibly the Ruby Creek neighborhood - areas where mixed-use shop front type buildings are desired. However, a minimum density requirement that makes garden apartments (with surface parking) ineligible for the incentive could be used in more areas of the city because of the benefits that a project with this density provides to the city. It would discourage more garden apartments and encourage both multi-family and mixed-use projects that reduce surface parking.
  - c. **Reduce (or eliminate) the requirement that a percentage of the building be dedicated to commercial use.** Instead, the HAP suggests that a minimum percentage of the project be commercial frontage. This would be more suitable for irregularly shaped sites with limited commercial frontage that may not be as viable for commercial development.
4. **Middle Housing Tax Exemption.** The City's existing program is limited to projects containing 10 or more units of housing. A key takeaway from the HAP is the need to encourage middle housing types which are often smaller scale projects. The City may want to create a middle-housing MFTE incentive. Middle housing projects are typically built at lower densities than those projects described in Section 3, but don't utilize shared parking lots. Staff recommends



that a new type of middle housing MFTE incentive be created to apply to fourplexes, townhome projects, cottage housing, and other residential infill projects containing fewer than 12 units. This could be widely available and would help make the construction of these missing middle housing types more attractive to developers. The incentive could be made widely available in most residential areas.

5. **Other Suggested Amendments:** The HAP contains a variety of other recommendations described below. In addition, there are a few requested map changes from developers as well as some staff recommended amendments to the MFTE Chapter.

a. **Defining Urban Centers. RCW 84.14 requires that MFTE programs be limited to Urban Centers. Urban Centers are defined as:**

"Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

- (a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;
- (b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and
- (c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.

The City has chosen to further define Urban Centers under the Type 1, 2, and 3 MFTE exemptions as only being allowed in centers as designated in the Comprehensive Plan. This action has had the effect of further restricting the locations where MFTE is available. In many instances, the City's center boundaries have been designated to meet rigid criteria for transportation funding from the Puget Sound Regional Council rather than logical locations for more intense development or areas that meet the state definition of Urban Center. Staff recommends that the reference to centers as designated in the Comprehensive Plan be removed from POMC 3.48 and that the City instead rely solely on the state's definition of Urban Center.

**Consider Height Bonuses for MFTE projects.** The City's HAP includes a recommendation that the City consider providing height bonuses for projects that qualify for MFTE. This recommendation has the potential to increase project density and the supply of affordable housing but may conflict with various overlay districts that have been adopted. The Land Use Committee discussed this recommendation and indicated that they preferred to refrain from taking this action at this time but that the full City Council should discuss the recommendation. Staff recommends that the City Council not pursue this recommendation at this time due to numerous other code sections to be reviewed in conjunction with such a change. Staff does see value in exploring this topic as part of a future separate action.

**Recommendations:** Based on the alternatives presented in this report and if the City Council wishes to retain an MFTE program, staff is recommending that the following changes be made:

1. Type 1. Staff recommends that the City Council retain the 12-year multi-family tax-exemption but forego adopting changes in response to state law concerning the extension of existing 12-year tax exemptions and forego the 20-year exemption. The 20-year exemption may be worth discussing in the future if there is interest in developing a housing project that provides permanent affordable housing, but thus far there is no demand for this tool from developers in Port Orchard. The City has time to study and discuss whether and how to extend its existing 12-year MFTE projects as the first of these certificates does not expire until 2028. In addition, staff

would recommend increasing the affordability threshold from 10% to 20% below fair market rents to provide tenants in affordable units with greater cost savings. Consistent with the HAP, staff also recommends expanding the locations where this tool is available within the city and to remove the transit proximity requirement for this tax exemption option.

2. Type 2. Staff would recommend that the Council (via the Land Use Committee) review the level 2 tax exemption map and consider removing properties that it no longer seeks to have redeveloped and to consider additions in select areas such as locations where code violations are present. Consistent with recommendations of the HAP, the definition of underutilized buildings should also be corrected.
3. Type 3. For the Type 3 exemption, staff recommends that the City go to a minimum density standard for eligibility and abandon the current menu of options for determining eligibility.
4. Type 4 (new). Staff recommends that the City Council create a new Type 4 exemption that provides an eight-year benefit to middle housing projects containing 12 or fewer units in most or all residential areas of the city. The Council (possibly via the land use committee) should develop a new map for Type 4 exemptions.
5. Other Amendments.
  - a. Staff recommends that the City Council reduce the minimum project size for MFTE eligibility from 10 units to 4 units to make the program available for middle housing types and smaller scale projects.
  - b. The requirement that MFTE only be offered in centers designated in the Comprehensive Plan should be removed.

The City Council should provide guidance to staff to either prepare an ordinance repealing the MFTE program, should direct staff that it does not wish to change the program at this time, or should specify the changes to the program that it would like to see.

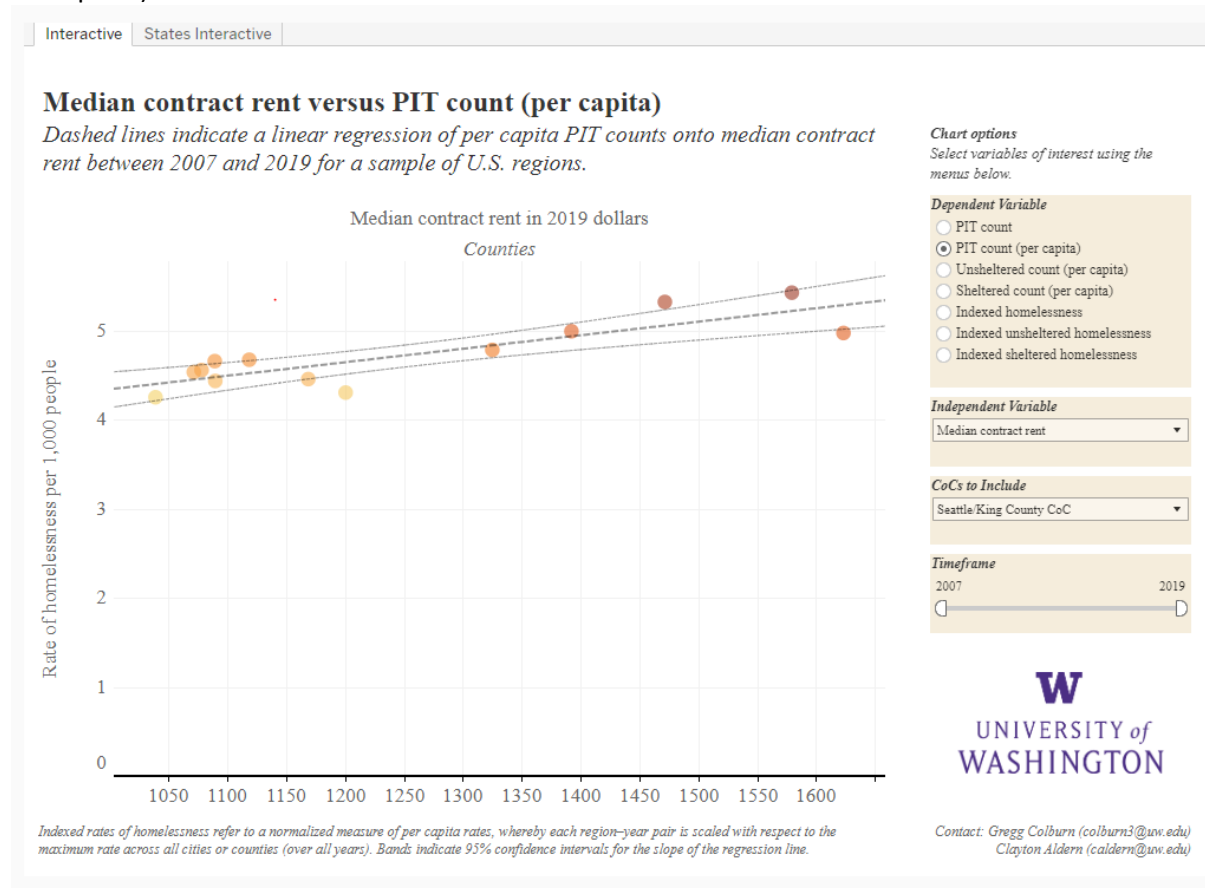
**Attachments:** Section 5.1 of the Housing Action Plan, POMC 3.48, Existing MFTE Maps

**Additional Information:** Staff recently attended training presented by the authors of the book, “Homelessness is a Housing Problem.” The book provides an analysis of the root causes of homelessness and looks at regional variation in homelessness across the US. A previous version of the presentation that we attended is available for online viewing. <https://vimeo.com/688483387> The presentation starts about 7 minutes into the video.

One of the takeaways from the book is that increases in rent are correlated to increasing rates of homelessness. One of the ways to prevent rent increases is to ensure that the housing supply is keeping up with demand and that vacancy rates in the city remain at healthy levels. Tighter rental markets typically lead to rising rents. As rents rise, people who are most at risk of homelessness due to financial insecurity, disabilities, mental illness, or drug addiction are often the first to be displaced and have the greatest difficulty finding new housing.

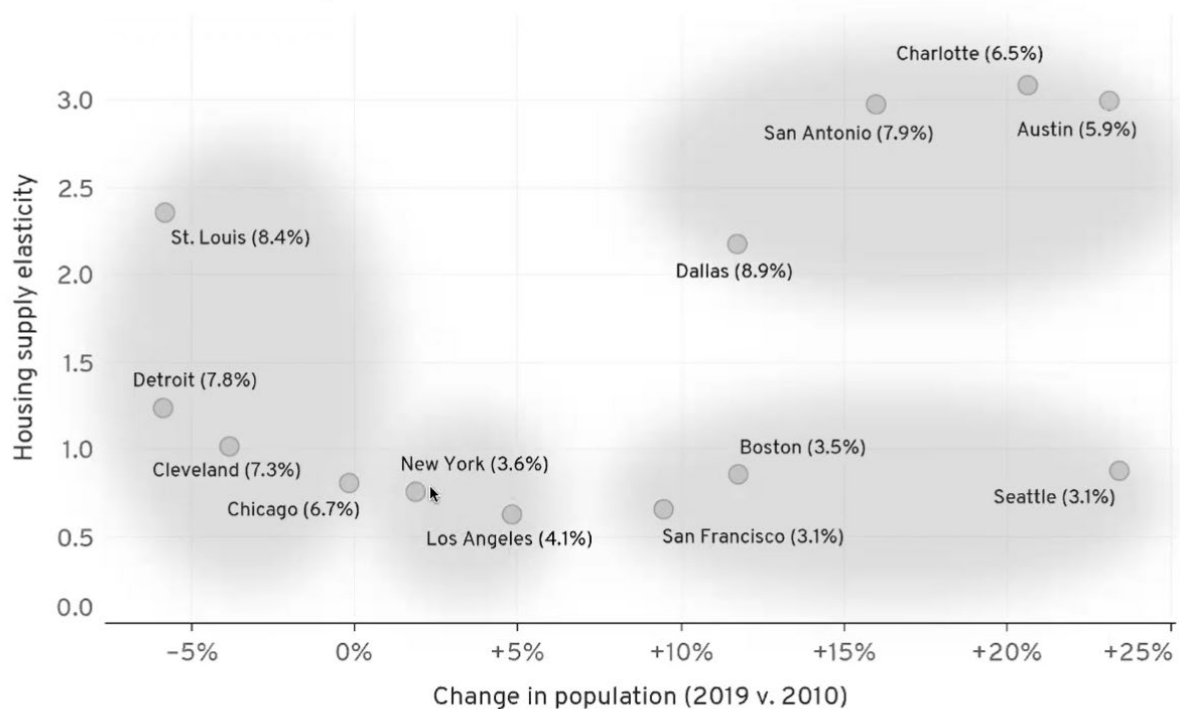
Data compiled and analyzed by the authors shows that increasing rents between 2010 and 2019 were correlated to increasing rates of homelessness in the Seattle area (see on the next page). This is true of all major metro areas studies but is most pronounced in smaller metro areas with rapid growth, topographic constraints (mountains and water), and a difficult regulatory environment. In cities like Seattle and San Francisco, the housing market is inelastic, because it is difficult for the market to rapidly create new housing in response to rising rents and low vacancy rates. Inland sunbelt cities don’t have the same land constraints and have fewer regulations which makes the housing market more elastic in its response to rising rents. This is depicted in figure 2 on the next page.

When considering the MFTE program, the City Council should understand that the program helps to mitigate for Washington's difficult regulatory environment and helps to make housing market more elastic in its response to rising rents (regardless of whether the City chooses to offer an 8- or 12- year exemption).



## Population growth versus housing supply elasticity

Dots indicate U.S. cities; parentheses indicate 2010–2019 rental vacancy rates.



Supply elasticity estimates follow Saiz (2010). Figure forthcoming in Colburn & Aldern (2022).

## 5 – Funding Strategies

These actions relate to the financing and funding of affordable housing and related issues like taxes, fees, and state law.

### 5.1 - Multifamily Tax Exemption Program

**Action:** Update the MFTE program based on increased developer interest in multifamily and mixed-use projects to streamline requirements, balance affordability and foregone tax revenue, and take advantage of increased flexibility in statewide legislation.

#### 5.1.1 – MFTE Overview

A multifamily tax exemption (MFTE) program is authorized by a 1995 state law, [RCW 84.14](#). Cities can grant an 8-year property tax exemption for any multifamily development or a 12-year exemption for multifamily developments that reserve at least 20 percent of units for low- and moderate-income households.

The state made several changes to the MFTE program in 2021. The 12-year tax exemption and affordability covenants can now be renewed for 12 more years if the property owner continues to provide units affordable to low-income families. Cities may now also offer a 20-year tax exemption for ownership units if at least 25 percent of these condominium units are sold as permanently affordable ownership housing.<sup>61</sup>

A MFTE program can be used for new buildings or existing buildings that require major rehabilitation. For cities under 20,000 residents, both the 12-year and the 20-year programs require the development to be in a zone that allows at least 15 dwelling units per acre.

Land, existing site improvements, and non-residential improvements are not exempt and are subject to normal property taxes. At the local government's discretion, the exemption's basis may be limited to the value of affordable units or other criteria. The local government has latitude in many aspects. It can require certain public benefits, change what types of development apply, and can map specific areas where the exemption is available. Cities can also set lower maximum rent prices than the statute allows and other lease stipulations such as requiring the participating units to be pet-friendly.

The MFTE program can have complex fiscal implications due to Washington's "levy lid" restrictions which limit the rate of increase of total regular property tax revenue to 1% per year for communities of 10,000 or more. In theory, the value of the tax exemption granted to developers would represent foregone revenue for the city. However, the reality is more complicated. Construction of MFTE projects often takes place over multiple years and county assessors are required to factor in the portion of new projects which are completed by July 31 each year. However, the tax exemption itself does not take effect until January 1 after the year in which the project is completed. Theoretically, the assessor should remove the value of the partially-constructed MFTE properties which were previously added at this point, however, in

---

61 "Overview of 2021 Changes to the Multifamily Housing Tax Exemption Program." Washington State Department of Commerce. <https://deptofcommerce.box.com/shared/static/7k5p88yv41m8ot882gbtzafwzlofkf05.pdf>

reality this happens inconsistently. As a result, the value of the portion of the property which was completed in years prior to the final year of construction can result in a “tax shift” where taxes on that portion of the project’s property value are shifted to the citywide tax base if that portion is not removed from the assessor’s table of total taxable property value.<sup>62</sup> This complex situation can obfuscate whether the tax exemption results in foregone revenue to the city or whether it merely shifts taxes to the citywide tax base. In most cases, both are occurring to some degree. The Washington Joint Legislative Audit and Review Committee’s 2019 audit of the MFTE program found that they could not determine the amount of local tax savings which was shifted to other taxpayers as a result of the complex situation around the “levy lid.”<sup>63</sup>

### 5.1.2 – Port Orchard MFTE Summary

Port Orchard has had an MFTE program in place since 2016, which is codified under [Chapter 3.48 POMC](#), and which provides three types of exemptions. The “Type 1” program is a 12-year exemption available to properties zoned for multifamily or mixed-use near transit or ferry and requires 20 percent of units to be rented at affordable rates based on HUDs fair market rent. The “Type 2” program is an 8-year exemption available to abandoned or underutilized properties within local centers of importance which are encouraged to redevelop. The “Type 3” program is an 8-year exemption available to properties within local centers of importance and zoned for multifamily or mixed-use with requirements for denser, “urban” style development: a minimum density of 50 units per acre and at least 50 percent structured parking, shopfronts equal to 40 percent of all building footprints, or additional height purchased through the city’s transfer of development rights program.

A total of four projects totaling 332 units (including 20 affordable units) have been built using Port Orchard’s MFTE program, and four more projects totaling 427 more units (including 45 affordable units) are currently in progress. For a full summary of Port Orchard’s MFTE program, see Section 5 of the Existing Conditions and Housing Needs Analysis Report in the Appendix.

Port Orchard’s method of setting subsidized rents in MFTE projects at 10 percent below HUD fair market rents is unusual, as most jurisdictions in Washington rent subsidized MFTE units to families earning between 80 and 115 percent of HUD’s MFI for their area, and cap the rent at 30 percent of the household’s income, adjusted for household size.<sup>64</sup> However, Port Orchard’s system meets legal state requirements and, based on a preliminary analysis, seems to result in rents which are lower than those based on the larger Bremerton-Silverdale MSA HUD MFI.

### 5.1.2 – Recommendations

Port Orchard has seen an increase in proposed downtown residential-commercial mixed-use projects in recent years. Since these types of projects would be eligible for MFTE funding, it is important to revisit and potentially update some aspects of the program to balance the benefit

<sup>62</sup> This concept is very complex and more information can be found in Commerce’s “What is Tax Shift?” guidesheet here <https://deptofcommerce.app.box.com/s/9jg7p2ebm467ddpmb1c5u3d4ei22cs1n> as well as starting on p. 37 of Commerce’s MFTE guidebook here: <https://deptofcommerce.app.box.com/s/ij5o80ne5e1740mmh6u05qjrk047g3cw>

<sup>63</sup> The JLARC audit’s findings can be found at: [https://leg.wa.gov/jlarc/taxReports/2019/MFTE/f\\_ii/default.html](https://leg.wa.gov/jlarc/taxReports/2019/MFTE/f_ii/default.html)

<sup>64</sup> Following HUD’s definition of a “cost-burdened” household

and foregone tax revenue of affordable units to ensure the program's goals are being met and to address recent changes in the program allowed under state law.<sup>65</sup>

**Clarify map and zoning of areas of MFTE eligibility.** MFTE projects must be in urban centers as defined by RCW 84.14.010, which describes compact districts with a variety of shops, a mix of uses, and public facilities. Port Orchard's municipal code contains maps of parcels eligible for MFTE funding, but they are difficult to read and are not updated with the latest parcel lines, as shown below in **Error! Reference source not found..** An improved map which shows both the city's established "centers" and the outline of areas eligible for MFTE development at a larger scale would streamline the process for potential developers.

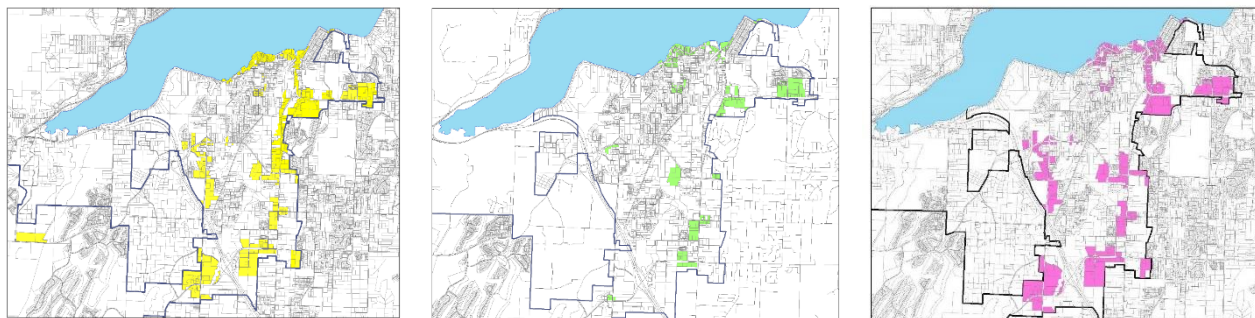


Figure 23. Maps of parcels currently eligible for the Type 1, Type 2, and Type 3 MFTE programs. Source: City of Port Orchard Municipal Code

**Correct definition of underutilized buildings.** POMC 3.48.040(2)(a)(iii) states that underutilized buildings have an "assessed building value to land ratio of two-to-one or more." This appears to be backwards, as underutilized buildings are defined by a low building to land-value ratio. The code should be revised to state "building value to land ratio of two-to-one or less," or *land value to building value* ratio of two-to-one or more."

**Add minimum density in units per acre to multifamily and mixed-use zones.** State law requires that 12-year and 20-year MFTE programs which contain affordable rental or homeownership units be located in areas zoned for a minimum average density of 15 units per acre in cities with populations under 20,000. Port Orchard does not currently define minimum unit densities in its code, although the allowed zoning in MFTE areas likely meets this threshold based on allowed height, setbacks, FAR, etc. However, to better comply with state law, considering quantifying minimum densities in the zoning code for mixed-use and multifamily zones. See Section 2.3.3 for considerations.

**Consider changes to the method of income calculations for affordable units and conduct an audit of the program.** Port Orchard's program is unusual in that it uses HUD fair market rent to calculate rents for subsidized units. Although the system seems to be working and is allowed under state law, it may be more complex for developers or property managers who are accustomed to methods used in most other cities where MFTE programs are tied to the HUD median family income. If the City wishes to ensure a deeper level of affordability compared to the MFI, the program could be calibrated to a lower level (such as 60 percent rather than 80

<sup>65</sup> A comprehensive list of 2021 legislative changes to the MFTE program can be found here: <https://deptofcommerce.box.com/shared/static/7k5p88yv41m8ot882gbtzaftwzlofkf05.pdf>



percent MFI). Regardless of the method used, the city should audit the MFTE program annually to ensure that the cumulative benefit to income-restricted residents is greater than the foregone revenue from the tax exemption. This audit should be conducted by the Community Development or Finance department and should result in an annual report presented to city council. Additionally, consider partnering with Housing Kitsap for MFTE administration and to reduce city staff's workload when verifying incomes of subsidized unit residents, since housing authorities have infrastructure and skills in place to conduct such income verifications.

**Consider removing transit proximity for affordable units.** Port Orchard's Type 1 program currently requires projects to be within ½ mile of a transit stop or ferry terminal. Although this provides benefits to lower-income residents who do not own vehicles, the quality and availability of transit service in Port Orchard is low and a recent study by WSDOT indicates that transit in the city is not at the level or frequency which encourages residents to own fewer vehicles.<sup>66</sup>

It is also not clear that transit proximity has any practical effect, since the maps for the Type 1 and Type 3 programs are nearly identical. Removing this requirement could expand eligible projects and the distribution of affordable units across the city.

**Consider a height bonus for MFTE developments.** Currently Port Orchard allows a height bonus for Type 3 MFTE developments through the Transfer of Development Rights (TDR) program. Such programs are rarely used. Numerous cities in Washington, including Port Angeles and Kirkland, allow height bonuses in exchange for the provision of affordable units in their MFTE programs. Consider adding such a bonus to the MFTE to improve development feasibility. Such a program could have separate height bonus allowances based on zoning and MFTE program type. See Strategy 2.3.2 for more details.

**Streamline requirements for Type 3 program.** The Type 3 program currently has somewhat stringent requirements to create denser, urban-style buildings through various criteria. Although the intention to stimulate higher density development in centers is an important component of the program, recent projects suggest that the share of structured parking, density, and commercial square footage required may be disincentivizing use. Each of the three requirements could be streamlined to increase viability of participating in the program:

- The **requirement for 50 percent structured parking combined with 50 units per acre of density** may be redundant since the only way to achieve higher densities is by putting parking into structures. Eliminating the structured parking requirement but retaining a relatively high-density requirement (40-50 units per acre) would effectively require that the project either include structured parking or that surface parking ratios are relatively low.
- Reducing the requirement **for 40 percent of all building footprints to contain commercial use** or replacing this requirement with a required minimum percentage of the frontage being commercial would be appropriate given the existing amount of

<sup>66</sup> "Frequent Transit Service Study." Washington State Department of Transportation.  
<https://engage.wsdot.wa.gov/frequent-transit-service-study/>

commercial zoning in Port Orchard. The design requirements in the MFTE ordinance may also be superfluous given the existing block frontage standards in POMC 20.127.

- Finally, an overall height bonus for MFTE developments as discussed above may be more effective than the **TDR height bonus** option currently in the Type 3 program.

**Reduce minimum number of units required for participation.** Port Orchard's program currently requires a minimum of 10 units in a project to qualify for the MFTE program. State law only requires a minimum of four units. Updating the Port Orchard program to require a minimum of four units would bring the program in line with statewide standards as well as potentially providing added feasibility for smaller "missing middle" housing types.

**Consider adding a requirement for affordable units to be distributed** within a development/building. This promotes principles of mixed-income communities and avoids real or perceived concentrations of poverty

**Consider adding a 20-year MFTE program.** Since 2021, cities under 20,000 residents such as Port Orchard can add a 20-year ownership MFTE program under RCW 84.14.021(1)(b) where at least 25 percent of units must be sold to a qualified nonprofit or local government partner that will ensure permanent affordable homeownership. Providing affordable homeownership opportunities to low- and moderate-income households can help build wealth for households which otherwise could not afford to own a home.

**Allow a 12-year extension for Type 1 participating property owners.** Since 2021, cities are allowed to grant a 12-year extension to existing MFTE programs within 18 months of expiration. Multifamily housing approved for a 12-year extension must maintain 20% of units as affordable for low-income households (during the extension period moderate-income households are no longer included in the affordable unit counts). Tenant notice and relocation assistance are required in the 10<sup>th</sup> and 11<sup>th</sup> years of projects receiving a 12-year extension (see more detail below). Port Orchard should consider adding this provision to its MFTE program to ensure continued affordability of units created through this program.

**Require relocation assistance for low-income tenants whose rent subsidy is expiring.** The 2021 changes to the MFTE program which allow the 12-year extension described above also require that landlords provide notice in the 10<sup>th</sup> and 11<sup>th</sup> years of the program that it will expire in the 12<sup>th</sup> year and provide one month's rent as relocation assistance to qualified tenants in their final month of tenancy. Best practices in line with the anti-displacement strategies in Strategy 3.1 would also extend these tenant protections to any Type 1 property, regardless of whether it is an extension or not.

## **Chapter 3.48**

# **MULTIFAMILY PROPERTY TAX EXEMPTION**

Sections:

**3.48.010 Purpose.**

**3.48.020 Definitions.**

**3.48.030 Residential targeted areas – Criteria – Designation.**

**3.48.040 Designated residential targeted areas – Types 1 through 3.**

**3.48.050 Terms of the tax exemption.**

**3.48.060 Project eligibility.**

**3.48.070 Application procedure.**

**3.48.080 Application review – Issuance of conditional certificate – Denial – Appeal.**

**3.48.090 Extension of conditional certificate.**

**3.48.100 Application for final certificate.**

**3.48.110 Issuance of final certificate.**

**3.48.120 Annual compliance review – Reporting.**

**3.48.130 Cancellation of tax exemption.**

### **3.48.140 Conflict of provisions.**

#### **3.48.010 Purpose.**

As provided for in Chapter [84.14](#) RCW, the purpose of this chapter is to provide limited exemptions from ad valorem property taxation for multifamily housing in designated residential targeted areas to:

- (1) Encourage increased residential opportunities, including affordable housing units, within areas of the city designated by the city council as residential targeted areas; and/or
- (2) Stimulate new construction or rehabilitation of existing vacant and underutilized buildings for multifamily housing in designated residential targeted areas to increase and improve housing opportunities, including affordable housing; and
- (3) Accomplish the planning goals required under the Growth Management Act, Chapter [36.70A](#) RCW, as implemented by the city's comprehensive plan. (Ord. 029-20 § 2; Ord. 023-16 § 2).

#### **3.48.020 Definitions.**

When used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- (1) "Affordable housing" means the definition provided for in RCW [84.14.010](#).
- (2) "Department" means the city department of community development.
- (3) "Director" means the director of the department of community development or designee.
- (4) "Fair market rent" means the Federal Department of Housing and Urban Development's estimate of what a household seeking a modest rental home in a short amount of time can expect to pay for rent and utilities in the current market, as updated annually.
- (5) "Household" means the definition provided for in RCW [84.14.010](#).

(6) “Median family income” means the median family income for the Bremerton-Silverdale metropolitan statistical area, as calculated by the Federal Department of Housing and Urban Development and updated annually.

(7) “Mixed-use development” means a mix of residential and commercial development, either in the same building or in separate buildings on a site, and involving one or more building types, as permitted by the city’s comprehensive plan, zoning (including any overlay districts), and design regulations.

(8) “Multifamily housing” (for the purposes of this chapter) means a building having 10 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.

(9) “Owner” means the definition provided for in RCW [84.14.010](#).

(10) “Permanent residential occupancy” means the definition provided for in RCW [84.14.010](#).

(11) “Rehabilitation improvements” means the definition provided for in RCW [84.14.010](#).

(12) “Residential targeted area” means the definition provided for in RCW [84.14.010](#) and the area(s) that have been so designated by the city council pursuant to this chapter.

(13) “Substantial compliance” means the definition provided for in RCW [84.14.010](#).

(14) “Urban center” means the definition provided for in RCW [84.14.010](#). (Ord. 029-20 § 2; Ord. 023-16 § 2).

### **3.48.030 Residential targeted areas – Criteria – Designation.**

(1) Following notice and public hearing as prescribed in RCW [84.14.040](#) of the city council’s intention of designating a residential targeted area, the city council may, in its sole discretion, designate one or more residential targeted areas. Each residential targeted area must meet the following criteria, as determined by the city council:

(a) The area is within an urban center as designated in the city's comprehensive plan (as a regional, countywide, or local center), or was previously designated a residential target area as shown on the map labeled Figure 1: Alternative 1 in Ordinance 023-16; and

(b) The area lacks sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center if affordable, desirable, attractive, and livable residences were available; and

(c) Providing additional housing opportunities, including affordable housing, in the area will assist in achieving one or more of the purposes of this chapter.

(2) In designating a residential targeted area, the city council may also consider other factors including, but not limited to:

(a) Additional housing, including affordable housing units, in the residential targeted area will attract and maintain an increase in the number of permanent residents;

(b) An increased permanent residential population in the residential targeted area will help to achieve the planning goals mandated by the Growth Management Act under Chapter [36.70A](#) RCW, as implemented through the city's current and future comprehensive plans;

(c) Encouraging additional housing in the residential targeted area is consistent with public transportation plans; or

(d) Additional housing may contribute to revitalization of a distressed neighborhood or area within the city.

(3) At any time the city council may, by resolution, and in its sole discretion, amend or rescind the designation of a residential targeted area pursuant to the same procedural requirements as set forth in this chapter for original designation. (Ord. 029-20 § 2; Ord. 003-19 § 2 (Exh. 1); Ord. 023-16 § 2).

### **3.48.040 Designated residential targeted areas – Types 1 through 3.**

In accordance with POMC [3.48.030](#), the city council has designated three types of designated residential targeted areas, as provided below and as shown on Figures 1 through 3. The maps in Figures 1 through 3 are provided for planning purposes only, and all development that is proposed to qualify for tax exemption within these areas must meet the criteria of this chapter, as well as all other relevant city standards, including but not limited to: the comprehensive plan, zoning code, building code, public works standards, critical areas regulations and the shoreline master program. The project must also comply with any other standards and guidelines adopted by the city council for the specific residential targeted area.

(1) Type 1: Affordable Housing with Transit Access.

(a) As shown on Figure 1, the Type 1 residential targeted area is limited to parcels within centers designated in the comprehensive plan that are zoned for multifamily (including mixed-use) development within one-half mile of a transit route or ferry terminal. If more than 75 percent of the buildable portions of the property area are located more than one-half mile from a transit route or ferry terminal, the property is not eligible for inclusion on the Figure 1 map.

(b) Residential development in a Type 1 residential targeted area is eligible to be considered for 12-year tax exemption.

(c) An affordable housing component is required.

(i) A minimum of 20 percent of all residential units in the development shall be rented for at least 10 percent below fair market rent for 12 years, to tenants whose household annual income is:

(A) At or below 40 percent of median family income, for housing units in congregate residences or small efficiency dwelling units;

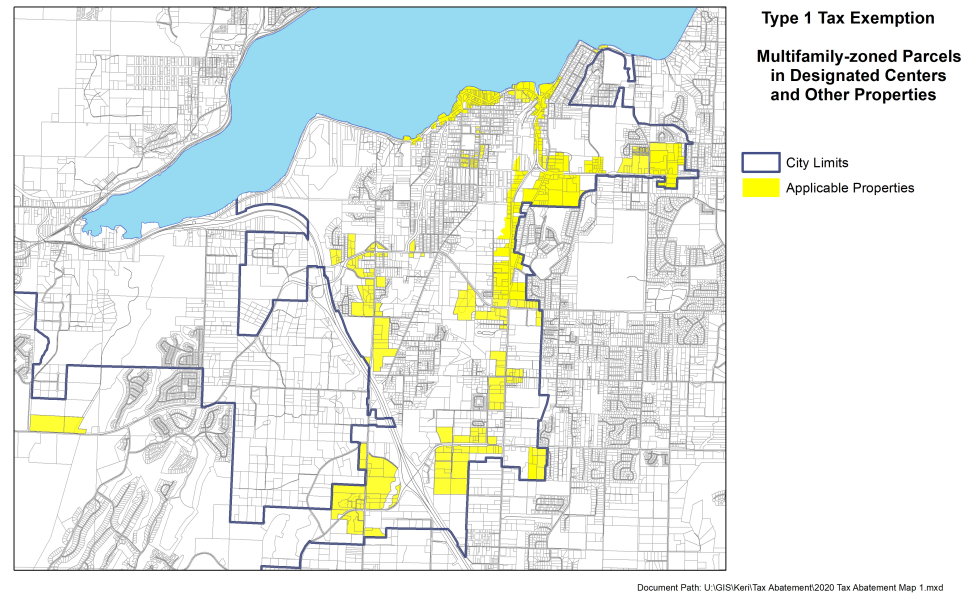
(B) At or below 65 percent of median family income for one-bedroom units;

(C) At or below 75 percent of median family income for two-bedroom units; and

(D) At or below 80 percent of median family income for three-bedroom and larger units.



(ii) If calculations for the minimum 20 percent of the residential units required under subsection (1)(c)(i) of this section result in a fraction, then the minimum number of residential units required to meet the affordable housing requirement shall be rounded up to the next whole number.



**Figure 1: Type 1 Tax Exemption Map**

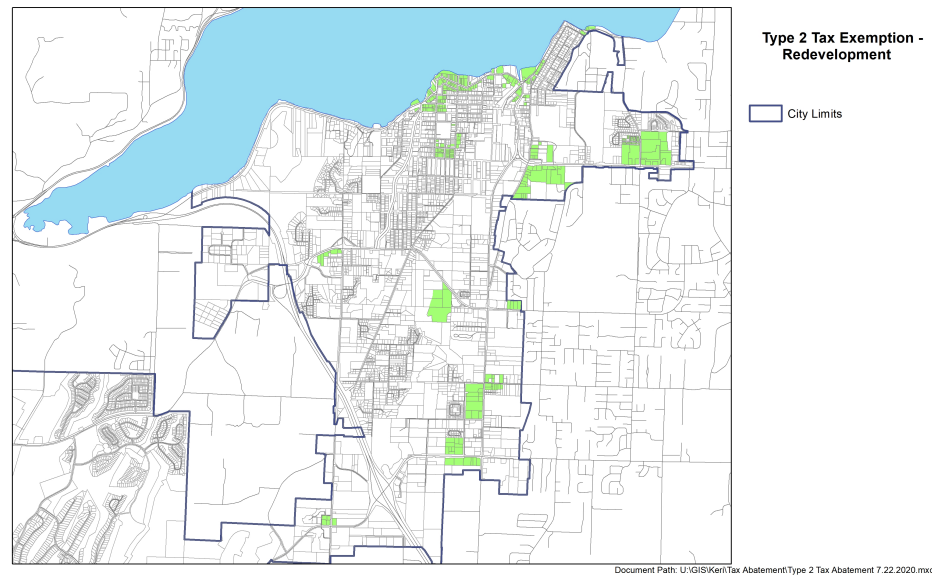
**(2) Type 2: Redevelopment Areas.**

(a) As shown on Figure 2, the Type 2 residential targeted area is limited to parcels within centers designated in the comprehensive plan that are encouraged to redevelop with multifamily or mixed-use development. These include parcels that: (i) have abandoned buildings (vacant or unused for more than two years); (ii) underutilized buildings (50 percent or more vacancy for more than two years); or (iii) contain existing structures and improvements with an assessed building value to land ratio of two-to-one or more.

(b) Residential development in a Type 2 residential targeted area is eligible to be considered for eight-year tax exemption.

(c) No affordable housing component is required.

(d) For certain parcels, rezoning may be required for multifamily or mixed-use development.



**Figure 2: Type 2 Tax Exemption Map**

(3) Type 3: Mixed-Use Development with Structured Parking and/or Transfer of Development Rights.

(a) As shown on Figure 3, the Type 3 residential targeted area is limited to parcels within centers designated in the comprehensive plan that are zoned for multifamily (including mixed-use) development.

(b) Residential development in a Type 3 residential targeted area is eligible to be considered for an eight-year tax exemption.

(c) No affordable housing component is required.

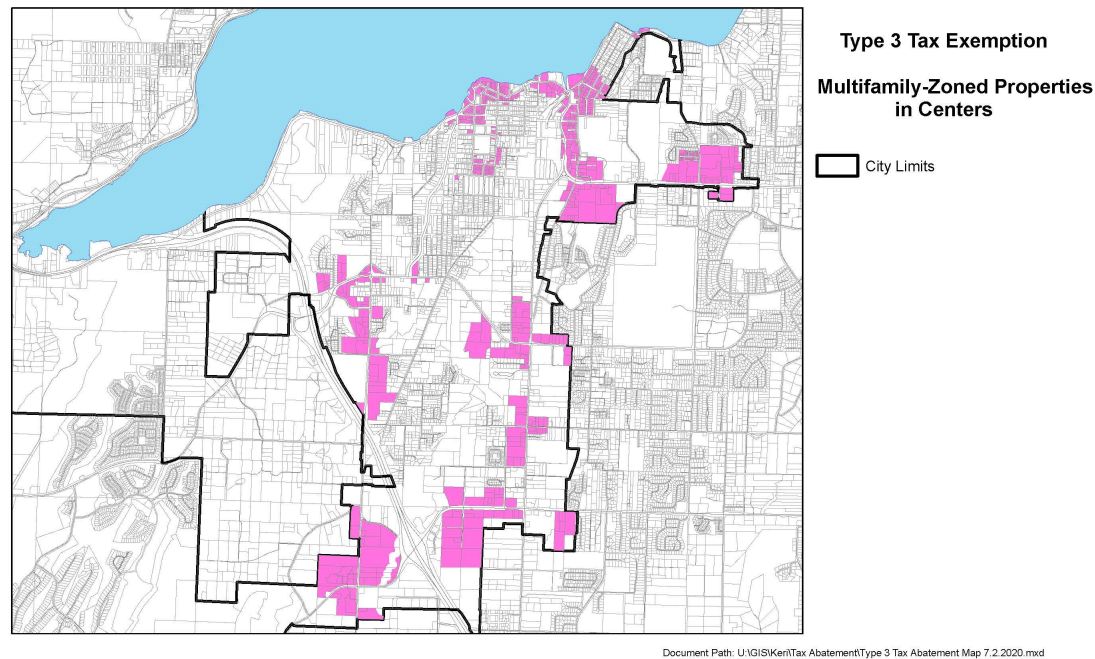
(d) The proposed development shall include at least one of the following:

(i) At least 50 percent of the required parking for the proposed use(s) shall be located within the footprint of a building containing multifamily units, in a multistory parking structure, at/or below grade; and the project should achieve at least 50

units per net developable acre (excluding critical areas and buffers, and other land that is undevelopable such as shoreline buffers and tidelands).

(ii) Construct mixed-use shopfront building type development (refer to Chapter [20.32](#) POMC) containing nonresidential/nonparking garage square footage that measures at least 40 percent of the total building footprint square footage for all buildings on the development site. The nonresidential/nonparking garage square footage may be in one or more buildings on the site. Live-work units shall be considered as nonresidential square footage for the purpose of achieving the required 40 percent minimum; provided, that the units are designed as shopfronts along a public street.

(iii) Purchase one additional story of building height for one or more buildings through the city's transfer of development rights (TDR) program (refer to Chapter [20.41](#) POMC) and construct (a) building(s) that utilizes the additional height allowance.



**Figure 3: Type 3 Tax Exemption Map**

(Ord. 029-20 § 2).

**3.48.050 Terms of the tax exemption.**

(1) Duration of Exemption. The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows:

(a) For both eight-year and 12-year exemptions, the exemption begins on January 1st of the year immediately following the calendar year of issuance of the tax exemption certificate.

(b) For 12-year exemptions, the number of residential units identified to meet the requirements for an affordable housing component per POMC [3.48.040](#)(1)(c) shall continue to be made available for the length of the exemption period.

(i) The mix and configuration of housing units (e.g., studio, one-bedroom, two-bedroom) used to meet the requirement for affordable units shall be substantially proportional to the mix and configuration of the total housing units in the project.

(ii) When a project includes more than one building with multifamily housing units, all of the affordable housing units required in this subsection must not be located in the same building.

(2) Limits on Exemption. The exemption does not apply:

(a) To the value of land or to the value of nonhousing-related improvements not qualifying under this chapter.

(b) In the case of rehabilitation of existing buildings, to the value of improvements constructed prior to submission of the completed application required under this chapter.

(c) To increases in assessed valuation made by the Kitsap County assessor on nonqualifying portions of building or other improvements and value of land nor to increases made by lawful order of a county board of equalization, the Department of Revenue, or Kitsap County, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law.

(3) Conclusion of Exemption. At the conclusion of the exemption period, the new or rehabilitated housing cost shall be considered as new construction for the purposes of Chapter [84.55](#) RCW. (Ord. 029-20 § 2; Ord. 003-19 § 2; Ord. 023-16 § 2. Formerly 3.48.040).

**3.48.060 Project eligibility.**

A proposed multifamily housing project must meet all of the following requirements for consideration for a property tax exemption:

- (1) Location. The project must be located within a residential targeted area as provided in POMC [3.48.040](#).
- (2) Tenant Displacement Prohibited. The project must not displace existing residential tenants of structures that are proposed for redevelopment. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate.
- (3) Noncompliance with Building Codes. Existing dwelling units proposed for rehabilitation must fail to comply with one or more standards of the applicable state or city building codes.
- (4) Size of Project. The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of 50 percent of the space (excluding structured parking) for permanent residential occupancy. The project, whether new, converted, or rehabilitated multiple-unit housing, must include at least 10 units of multifamily housing within a residential structure or as part of an urban development. In the case of existing multifamily housing that is occupied or which has not been vacant for 12 months or more, the multifamily housing project must also provide for a minimum of four additional multifamily units for a total project of at least 10 units including the four additional units. Existing multifamily housing that has been vacant for 12 months or more does not have to provide additional units.
- (5) Proposed Completion Date. New construction of multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application. (Ord. 029-20 § 2; Ord. 023-16 § 2 Formerly 3.48.050).

**3.48.070 Application procedure.**

A property owner who wishes to propose a project for a tax exemption shall complete the following procedures:

- (1) The exemption application provided by the city shall be completed and filed with the department prior to issuance of a building permit for the project. The completed application shall be accompanied by the application fee as authorized by RCW [84.14.080](#) and as set forth in the city's current fee resolution.
- (2) The exemption application shall contain and require such information as deemed necessary by the director, including:

- (a) A brief written description of the project, including timing and construction schedule, setting forth the grounds for the exemption.
- (b) Floor and site plans of the proposed project, which may be revised by the owner, provided such revisions are made and presented to the director prior to the city's final action on the exemption application.
- (c) For rehabilitation projects, the applicant shall provide a report prepared by a registered architect identifying property noncompliance with current building codes. This report shall identify specific code violations and must include supporting data that satisfactorily explains and proves the presence of a violation. Supporting data must include a narrative and such graphic materials as needed to support this application. Graphic materials may include, but are not limited to, building plans, building details, and photographs.
- (d) If applying for a 12-year exemption, it shall include information describing how the applicant will comply with the affordability requirements set forth in POMC [3.48.040\(1\)\(c\)](#).
- (e) A statement from the owner acknowledging the potential tax liability when the project ceases to be eligible under this chapter.
- (f) An affidavit signed by the owner stating the occupancy record of the property for a period of 12 months prior to filing the application.
- (g) Verification of the correctness of the information submitted by the owner's signature and affirmation made under penalty of perjury under the laws of the state of Washington. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.060).

### **3.48.080 Application review – Issuance of conditional certificate – Denial – Appeal.**

- (1) Director's Decision. The director may certify as eligible an application which is determined to comply with all applicable requirements of this chapter. A decision to approve or deny an application shall be made within 90 calendar days of receipt of a complete application.
- (2) Approval of Application – Contract Required. If an application is approved, the applicant shall enter into a contract with the city, regarding the terms and conditions of implementation of the project, and pursuant to the following:

(a) The contract shall be subject to approval by the city council in the form of a resolution, regarding the terms and conditions of the project and eligibility for exemption under this chapter. This contract shall be a covenant running with the land and shall be binding on the assigns, heirs, and successors of the applicant.

(b) For any development project including owner-occupied units, the contract with the city shall also require that an owners' association organized under RCW [64.34.300](#) be formed for all owner-occupied units within the development, for at least the length of the exemption period granted, to assume the responsibility for collecting from all individual unit owners the information and documents required to complete the annual reporting requirements and for filing the required annual report with the city for each of the individual homeowners pursuant to POMC [3.48.120](#).

(c) Amendment of Contract. Within three years of the date from the city council's approval of the contract, an owner may request an amendment(s) to the contract by submitting a request in writing to the director. The fee for an amendment is as set forth in the city's current fee resolution. The director shall have authority to approve minor changes to the contract that are reasonably within the scope and intent of the contract approved by the city council, as solely determined by the director. Amendments that are not reasonably within the scope and intent of the approved contract, as solely determined by the director, shall be submitted to the city council for review and approval. The date for expiration of the conditional certificate shall not be extended by contract amendment unless all the conditions for extension set forth in POMC [3.48.090](#) are met.

(3) Issuance of Conditional Certificate. Upon city council approval of the contract required under subsection (2) of this section, the director shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate shall expire three years from the date of city council approval unless an extension is granted as provided in this chapter.

(4) Denial of Application. If an application is denied, the director shall state in writing the reasons for denial and shall send notice to the applicant at the applicant's last known address within 10 calendar days of issuance of the denial.

(5) Appeal. Per RCW [84.14.070](#), an applicant may appeal a denial to the city council within 30 calendar days of receipt of the denial by filing a complete appeal application and fee, as set forth in the city's current fee resolution, with the director. The appeal before the city council will be based on the record made before the director. The director's decision shall be upheld unless the applicant can show that



there is no substantial evidence on the record to support the director's decision. The city council's decision on appeal will be final. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.070).

### **3.48.090 Extension of conditional certificate.**

(1) Extension. The conditional certificate and time for completion of the project may be extended by the director for a period not to exceed a total of 24 consecutive months. To obtain an extension, the applicant must submit a written request with a fee, as set forth in the city's current fee resolution, stating the grounds for the extension. An extension may be granted if the director determines that:

- (a) The anticipated failure to complete construction or rehabilitation within the required time period is due to circumstances beyond the control of the owner; provided, that financial hardship, regardless of the cause or reason, shall not be considered by the director as a circumstance beyond the control of the owner in order to grant an extension;
- (b) The owner has been acting and could reasonably be expected to continue to act in good faith and with due diligence; and
- (c) All the conditions of the original contract (and as amended) between the applicant and the city will be satisfied upon completion of the project.

(2) Denial of Extension. If an extension is denied, the director shall state in writing the reason for denial and shall send notice to the applicant's last known address within 10 calendar days of issuance of the denial.

(3) Appeal. An applicant may appeal the denial of an extension to the hearing examiner within 14 calendar days of receipt of the denial by filing a complete appeal application and appeal fee with the director. The appeal before the hearing examiner shall be processed as a closed record hearing. No appeal to the city council is provided from the hearing examiner's decision. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.080).

### **3.48.100 Application for final certificate.**

Upon completion of the improvements agreed upon in the contract between the applicant and the city and upon issuance of a temporary or permanent certificate of occupancy, the applicant may request a final certificate of tax exemption by filing with the director such information as the director may deem necessary or useful to evaluate the eligibility for the final certificate, including the following:

- (1) A statement of expenditures made with respect to each multifamily housing unit and the total expenditures made with respect to the entire property;
- (2) A description of the completed work and a statement of qualification for the exemption;
- (3) The total monthly rent or total sale amount of each multifamily housing unit rented or sold to date;
- (4) A statement that the work was completed within the required three-year period or any authorized extension;
- (5) If a 12-year exemption, information on the applicant's compliance with the affordability requirements of this chapter; and
- (6) Any additional information requested by the city pursuant to meeting any reporting requirements under Chapter [84.14](#) RCW. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.090).

### **3.48.110 Issuance of final certificate.**

- (1) Director's Decision. Within 30 calendar days of receipt of all materials required for a final certificate, the director shall determine whether the specific improvements satisfy the requirements of the contract, application, and this chapter.
- (2) Granting of Final Certificate. If the director determines that the project has been completed in accordance with this chapter and the contract between the applicant and the city, and has been completed within the authorized time period, the city shall, within 10 calendar days of the expiration of the 30-day review period above, file a final certificate of tax exemption with the Kitsap County assessor. The director is authorized to cause to be recorded, at the owner's expense, in the real property records of the Kitsap County department of records, the contract with the city, as amended if applicable, and such other document(s) as will identify such terms and conditions of eligibility for exemption under this chapter as the director deems appropriate for recording, including requirements under this chapter relating to affordability of units.
- (3) Denial of Final Certificate. The director shall notify the applicant in writing that a final certificate will not be filed if the director determines that:
  - (a) The improvements were not completed within the authorized time period;

(b) The improvements were not completed in accordance with the contract between the applicant and the city; or

(c) The owner's property is otherwise not qualified under this chapter.

(4) Appeal. An applicant may appeal a denial of a final certificate to the hearing examiner within 14 calendar days of issuance of the denial of a final certificate by filing a complete appeal application and appeal fee with the director. The appeal before the hearing examiner shall be processed as a closed record hearing. No appeal to the city council is provided from the hearing examiner's decision. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.100).

### **3.48.120 Annual compliance review – Reporting.**

(1) Within 30 calendar days after the first anniversary of the date of filing the final certificate of tax exemption and each year for the tax exemption period, the property owner shall be required to file a notarized declaration with the director indicating the following:

(a) A statement of occupancy and vacancy of the multifamily units during the previous 12 months;

(b) A certification by the owner that the property has not changed use and continues to be in compliance with the contract with the city and the applicable requirements of this chapter;

(c) A description of changes or improvements to the property made after the city's issuance of the final certificate of tax exemption;

(d) The total monthly rent of each multifamily housing unit rented or the total sale amount of each unit sold during the 12 months ending with the anniversary date;

(e) A breakdown of the number, type, and specific multifamily housing units rented or sold during the 12 months ending with the anniversary date;

(f) If granted a 12-year exemption, information demonstrating the owner's compliance with the affordability requirements of this chapter, including, but not limited to, the income of each renter household at the time of initial occupancy or the income of each purchaser of owner-occupied units at the time of purchase;

(g) The value of the tax exemption for the project; and

(h) Any additional information requested by the city pursuant to meeting any reporting requirements under Chapter [84.14](#) RCW.

(2) City staff may also conduct on-site verification of the declaration and reporting required under this section. Failure to submit the annual declaration and report may result in cancellation of the tax exemption pursuant to this chapter and shall result in a review of the exemption per RCW [84.14.110](#).

(3) If the city issues final tax exemption certificates pursuant to this chapter, the director shall submit the report required by RCW [84.14.100](#) to the State Department of Commerce by December 31st of each year. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.110).

### **3.48.130 Cancellation of tax exemption.**

(1) The director may cancel a tax exemption on a property if they determine any of the following:

(a) The owner is not complying with the terms of the contract or this chapter;

(b) The use of the property is changed or will be changed to a use that is other than residential;

(c) The project violates applicable zoning requirements, land use regulations, building, or fire code requirements; or

(d) The owner fails to submit the annual declaration and report specified in POMC [3.48.120](#).

(2) If the owner intends to convert the multifamily housing to another use, the owner shall notify the director and the Kitsap County assessor in writing within 60 calendar days of the change in use.

(3) Cancellation may occur in conjunction with the annual review or at any such time noncompliance has been determined.

(4) Upon cancellation of the tax exemption, additional taxes, interest, and penalties shall be imposed on the property, and a priority lien may be placed on the land, pursuant to state law.

(5) Notice of Cancellation. Upon determining that a tax exemption is to be canceled, pursuant to RCW [84.14.110](#)(2), the director shall notify the owner by mail, return receipt requested.

(6) Appeal of Cancellation. The owner may appeal the determination of cancellation to the hearing examiner by filing a notice of appeal and appeal fee with the city clerk within 30 calendar days of the date of the notice of cancellation, specifying the factual and legal basis for the appeal. The appeal shall be heard by the hearing examiner as a closed record hearing. No appeal to the city council is provided from the hearing examiner's decision. (Ord. 017-23 § 1 (Exh. A); Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.120).

### **3.48.140 Conflict of provisions.**

If any provision of this chapter is in legal conflict with the provisions of Chapter [84.14](#) RCW, as currently adopted or hereafter amended, the provisions of Chapter [84.14](#) RCW shall apply as if set forth in this chapter. (Ord. 029-20 § 2; Ord. 023-16 § 2. Formerly 3.48.130).

---

The Port Orchard Municipal Code is current through Ordinance 021-23, passed August 8, 2023.

Disclaimer: The city clerk's office has the official version of the Port Orchard Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.cityofportorchard.us/>



City Telephone: (360) 876-4407

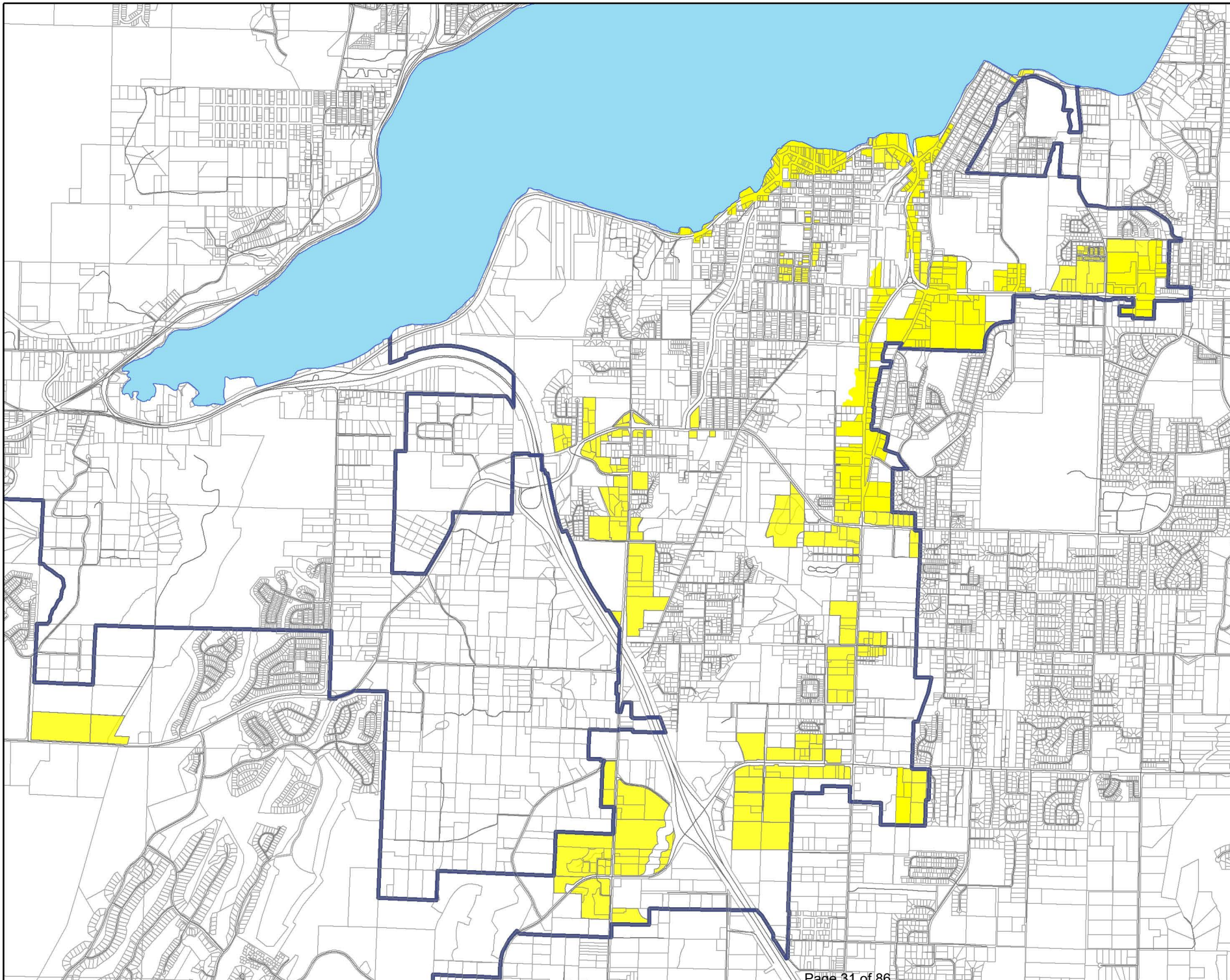
[Code Publishing Company](#)



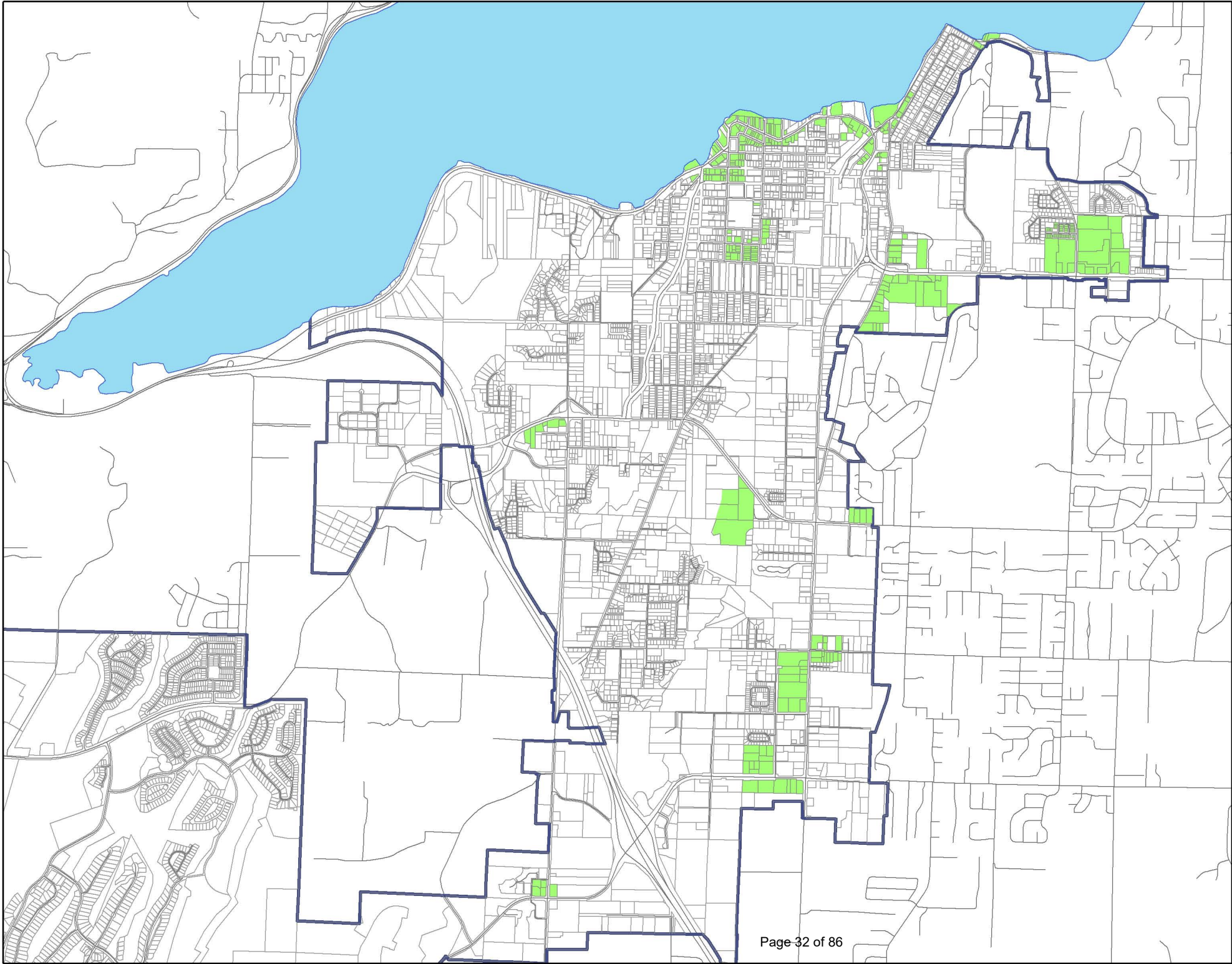
## Type 1 Tax Exemption

### Multifamily-zoned Parcels in Designated Centers and Other Properties


-  City Limits
-  Applicable Properties



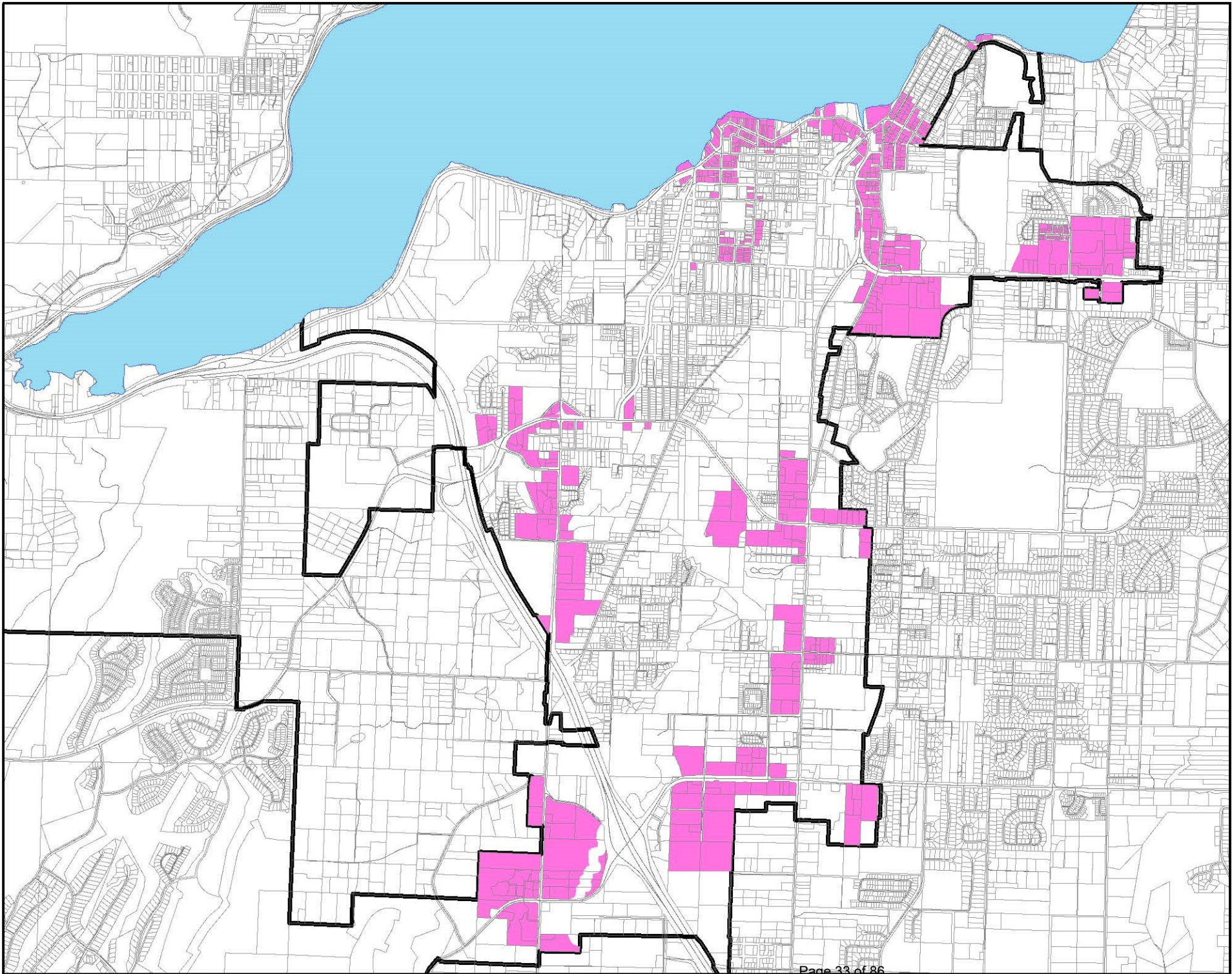




**Type 2 Tax Exemption -  
Redevelopment**


 City Limits





**Type 3 Tax Exemption**

**Multifamily-Zoned Properties  
in Centers**

 City Limits

# City of Port Orchard

## 2023 Multi-Family Tax Exemption Impact

September 19, 2023

# Discussion

---

- ▶ What is the impact of the Multi-family Tax Exemption on City of Port Orchard Property Tax Revenue?
- ▶ What is the impact to the property owners of Port Orchard?
- ▶ Is there an impact to other jurisdictions within the City?

# 2019-2023 Multi-Family Tax Exemptions History

## ▶ 2019 Tax Year Ovah LLC

▶ Exempted New Construction Assessed Value \$1,506,000

▶ Exempted New Construction Levy Value  $(\$1,506,000 * 1.6683) / 1000 =$  **\$2,512**

## ▶ 2020 Tax Year Ovah LLC

▶ Exempted New Construction Assessed Value \$4,130,270

▶ Exempted New Construction Levy Value  $(\$4,130,270 * 1.5368 / 1000) =$  **\$6,347**

## ▶ 2021 No New Exemptions

## ▶ 2022 No New Exemptions

## ▶ 2023 Tax Year Pottery Creek

▶ Exempted New Construction Assessed Value \$18,997,203

▶ Exempted New Construction Levy Value  $(\$18,997,203 * 1.2712) / 1000 =$  **\$24,149**



# 2019-2038 Forgone Property Tax Levy Collections

► Over the next 20-years of collections the City will have **forgone \$330,700** of Property Tax Levy Collections

► 2019	\$2,512	► 2029	\$35,352
► 2020	\$8,885	► 2030	\$35,706
► 2021	\$8,974	► 2031	\$3,055
► 2022	\$9,063	► 2032	\$3,085
► <b>2023</b>	<b>\$33,303</b>	► 2033	\$3,116
► 2024	\$33,636	► 2034	\$3,147
► 2025	\$33,973	► 2035	\$3,179
► 2026	\$34,312	► 2036	\$3,210
► 2027	\$34,655	► 2037	\$3,242
► 2028	\$35,002	► 2038	\$3,275

# Revenues Collected

---

- ▶ Park Impact Fee: \$104,536
- ▶ Transportation Impact Fee: \$281,710
- ▶ Total Impact Fee Revenue: \$386,246
- ▶ No Sewer or Water Connection Fee revenue as these are serviced by WSUD

# Future Multi-Family Tax Exemptions Anticipated

Entity	Est. New Construction Value	Levy Impact
▶ Plisko Apartments	\$5,856,240	\$?
▶ Blueberry Apartments	\$11,345,128	\$?
▶ Salmonberry Apartments	\$3,402,108	\$?
▶ Sedgwick Apartments	\$13,972,909	\$?
<b>Total</b>	<b>\$34,576,386</b>	

- ▶ *Illustrative Only:  $\$34,576,386 \times (1.2712 / 1000) = \$43,953$*
- ▶ ***\$43,953+1% per year***



# What is the impact to the property owners of Port Orchard?

2023 Avg PO Resident AV 457,005	Current with Exemption Per 1,000 of AV	Without Exemption Per 1,000 of AV	Property Taxes With Exemption	Property Taxes W/O Exemption	Additional Cost
<b>All</b>	\$ 8.4116	\$ 8.3869	\$ 3,844	\$ 3,833	\$ 11.25
County	\$ 0.6255	\$ 0.6237	\$ 286	\$ 285	\$ 0.84
County Conservation Future	\$ 0.0261	\$ 0.0260	\$ 12	\$ 12	\$ 0.03
State School Part 1	\$ 1.6181	\$ 1.6134	\$ 740	\$ 737	\$ 2.16
State School Part 2	\$ 0.8643	\$ 0.8617	\$ 395	\$ 394	\$ 1.16
SD 402 Special	\$ 2.1075	\$ 2.1013	\$ 963	\$ 960	\$ 2.82
<b>City</b>	<b>\$ 1.1211</b>	<b>\$ 1.1178</b>	<b>\$ 512</b>	<b>\$ 511</b>	<b>\$ 1.50</b>
Port of Bremerton	\$ 0.1971	\$ 0.1965	\$ 90	\$ 90	\$ 0.26
Fire Dist. No. 7	\$ 1.1073	\$ 1.1041	\$ 506	\$ 505	\$ 1.48
Fire Dist. No. 7- Emergency Med	\$ 0.4237	\$ 0.4224	\$ 194	\$ 193	\$ 0.57
Public Utility District No. 1 General	\$ 0.0447	\$ 0.0446	\$ 20	\$ 20	\$ 0.06
Library	\$ 0.2762	\$ 0.2753	\$ 126	\$ 126	\$ 0.37

# Thank You...

This concludes my  
remarks.

Questions?



## City of Port Orchard Work Study Session Executive Summary

---

**Issue Title:** LTGO Bond Delegation Ordinance

**Meeting Date:** September 19, 2023

**Time Required:** 30 Minutes

**Attendees:** Noah Crocker

### Action Requested At This Meeting:

---

#### Issue: LTGO bond delegation ordinance for city hall construction

##### Background:

The City Council adopted Resolution 059-23 on June 13, 2023 awarding contract C048-23 for construction improvements to the City Hall facility (including replacement of siding and windows, improvements to the HVAC system, minor interior renovations, and the acquisition and installation of solar power equipment and other related capital improvements and public amenities, all as deemed necessary and advisable by the City.

The City Council adopted Resolution 065-23 on June 27, 2023 declaring its intent to be reimbursed from a future borrowing for capital expenditures in connection with the City Hall Construction Project.

The City Council adopted Ordinance 018-23 on June 27, 2023 amending the 2023-2024 biennial budget to provide funding for contract C048-23 and to cashflow the City Hall Construction project until the future borrowing could be secured.

The Ordinance being presented provides for the delegation of authority to issue bonds.

- **The Ordinance authorizes the Mayor and/or Finance Director to proceed with finalizing the bond issuance within certain parameters set out in the Ordinance.** Finance expects to close the financing for the project before the end of 2023. However, the delegation expires after one year, in case additional time is needed due to bond market conditions or other factors.
- **The bonds will be “limited tax general obligation” bonds.** This means that they are issued within the City’s non-voted debt limitation and will be backed by the City’s full faith and credit. Finance expects to use several general fund resources to repay the bonds, which will be reflected in annual budget appropriations for debt service.

- **The maximum amount that may be issued is not more than \$11,120,000.** Finance expects that the final par amount of the bonds will be less than this, but the higher amount allows for adjustments for pricing the bonds based on market conditions. It targets a deposit of money to the project fund of approximately \$11 million, plus an estimated cushion sufficient to pay costs of issuing the bonds, such as payment to the underwriter, bond counsel, and rating agency, as well as costs of printing and posting disclosure documents and other related administrative expenses.
- **The Ordinance limits the borrowing cost.** Interest rates will be determined on the “pricing” date, based on bond market conditions on that date. If the true interest cost available on that date exceeds 6.0%, the finance department may not proceed without seeking additional authorization from the City Council.
- **The maximum term of the financing will be 20 years.** The finance team expects to reserve the City’s right to refinance at lower rates after 10 years,
- **The Ordinance assigns to the Finance Department certain administrative responsibilities.** After issuing the bonds, the City will have a responsibility to monitor ongoing compliance with federal tax and securities laws after the Bonds are issued until they are fully repaid.

**Alternatives:****Recommendation:****Relationship to Comprehensive Plan:** City Hall**Attachments:** To be provided**Follow-up Notes & Outcomes:**

CITY OF PORT ORCHARD, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Port Orchard, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of not to exceed \$11,120,000 aggregate principal amount of limited tax general obligation bonds to provide funds (i) to pay for a portion of the costs of certain improvements to the existing City Hall building and other capital improvements, and (ii) to pay the costs of issuance and sale of the bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City's designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.

Passed \_\_\_\_\_, 2023

This document prepared by

STRADLING YOCCA CARLSON & RAUTH, PC  
Seattle, Washington  
(206) 829-3000

## TABLE OF CONTENTS\*

	<b><u>Page</u></b>
Section 1. Definitions.....	1
Section 2. Findings and Determinations .....	4
Section 3. Authorization of Bonds.....	5
Section 4. Description of Bonds; Appointment of Designated Representative .....	5
Section 5. Bond Registrar; Registration and Transfer of Bonds.....	5
Section 6. Form and Execution of Bonds .....	6
Section 7. Payment of Bonds .....	7
Section 8. Funds and Accounts; Deposit of Proceeds.....	7
Section 9. Redemption Provisions and Purchase of Bonds .....	8
Section 10. Failure To Pay Bonds.....	9
Section 11. Pledge of Taxes .....	9
Section 12. Tax Covenants; Designation of Bonds as “Qualified Tax Exempt Obligations.” .....	9
Section 13. Refunding or Defeasance of the Bonds .....	10
Section 14. Sale and Delivery of the Bonds .....	11
Section 15. Official Statement; Continuing Disclosure.....	11
Section 16. Supplemental and Amendatory Ordinances.....	12
Section 17. General Authorization and Ratification .....	12
Section 18. Severability .....	12
Section 19. Effective Date of Ordinance .....	13
Exhibit A Parameters for Sale Terms	
Exhibit B Form of Undertaking to Provide Continuing Disclosure	

*\*The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

CITY OF PORT ORCHARD, WASHINGTON

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE of the City of Port Orchard, Washington, relating to contracting indebtedness; providing for the issuance, sale and delivery of not to exceed \$11,120,000 aggregate principal amount of limited tax general obligation bonds to provide funds (i) to pay for a portion of the costs of certain improvements to the existing City Hall building and other capital improvements, and (ii) to pay the costs of issuance and sale of the bonds; fixing or setting parameters with respect to certain terms and covenants of the bonds; appointing the City's designated representative to approve the final terms of the sale of the bonds; and providing for other related matters.

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1.     Definitions.     As used in this ordinance, the following capitalized terms shall have the following meanings:

(a)     “*Authorized Denomination*” means \$5,000 or any integral multiple thereof within a maturity of a Series.

(b)     “*Beneficial Owner*” means, with respect to a Bond, the owner of any beneficial interest in that Bond.

(c)     “*Bond*” means each bond issued pursuant to and for the purposes provided in this ordinance.

(d)     “*Bond Counsel*” means the firm of Stradling Yocca Carlson & Rauth, a Professional Corporation, its successor, or any other attorney or firm of attorneys selected by the City with a nationally recognized standing as bond counsel in the field of municipal finance.

(e)     “*Bond Fund*” means the Limited Tax General Obligation Bond Fund, of the City created for the payment of the principal of and interest on the Bonds and other general obligation bonds of the City.

(f)     “*Bond Purchase Agreement*” means an offer to purchase a Series of the Bonds, setting forth certain terms and conditions of the issuance, sale and delivery of those Bonds, which offer is authorized to be accepted by the Designated Representative on behalf of the City, if consistent with this ordinance.

(g)     “*Bond Register*” means the books or records maintained by the Bond Registrar for the purpose of identifying ownership of each Bond.

(h)     “*Bond Registrar*” means the Fiscal Agent, or any successor bond registrar selected by the City.



(i) “*Book-Entry Form*” means a fully registered form in which physical bond certificates are registered only in the name of the Securities Depository (or its nominee), as Registered Owner, with the physical bond certificates held by and immobilized in the custody of the Securities Depository (or its designee), where the system for recording and identifying the transfer of the ownership interests of the Beneficial Owners in those Bonds is neither maintained by nor the responsibility of the City or the Bond Registrar.

(j) “*City*” means the City of Port Orchard, Washington, a municipal corporation duly organized and existing under the laws of the State.

(k) “*City Council*” means the legislative authority of the City, as duly and regularly constituted from time to time.

(l) “*Code*” means the United States Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(m) “*DTC*” means The Depository Trust Company, New York, New York, or its nominee.

(n) “*Designated Representative*” means the officer or officers of the City appointed in Section 4 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2).

(o) “*Finance Officer*” means the City Treasurer, or such other officer of the City who succeeds to substantially all of the responsibilities of that office, or his or her designee.

(p) “*Fiscal Agent*” means the fiscal agent of the State, as the same may be designated by the State from time to time.

(q) “*Government Obligations*” has the meaning given in RCW 39.53.010, as now in effect or as may hereafter be amended.

(r) “*Issue Date*” means, with respect to a Bond, the date of initial issuance and delivery of that Bond to the Purchaser in exchange for the purchase price of that Bond.

(s) “*Letter of Representations*” means the Blanket Issuer Letter of Representations between the City and DTC, authorized to be executed in connection with the issuance and sale of the Bonds authorized herein, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

(t) “*MSRB*” means the Municipal Securities Rulemaking Board.

(u) “*Official Statement*” means an offering document, disclosure document, private placement memorandum or substantially similar disclosure document provided to purchasers and potential purchasers in connection with the initial offering of a Series of the Bonds in conformance with Rule 15c2-12 or other applicable regulations of the SEC.

(v) “*Owner*” means, without distinction, the Registered Owner and the Beneficial Owner.

(w) “*Project*” includes improvements to the City Hall facility (including replacement of siding and windows, improvements to the HVAC system, minor interior renovations, and the acquisition and installation of solar power equipment) and other related capital improvements and public amenities, all as deemed necessary and advisable by the City. Incidental costs incurred in connection with carrying out and accomplishing the Project, consistent with RCW 39.46.070, may be included as costs of the Project.

(x) “*Project Fund*” means the fund or account of the City designated by the Finance Officer to be used for the purpose of carrying out the Project.

(y) “*Purchaser*” means D.A. Davidson & Co. of Seattle, Washington or such other corporation, firm, association, partnership, trust, bank, financial institution or other legal entity or group of entities selected by the Designated Representative to serve as purchaser in a private placement, or underwriter in a negotiated sale.

(z) “*Rating Agency*” means any nationally recognized rating agency then maintaining a rating on the Bonds at the request of the City.

(aa) “*Record Date*” means the Bond Registrar’s close of business on the 15th day of the month preceding an interest payment date. With respect to redemption of a Bond prior to its maturity, the Record Date shall mean the Bond Registrar’s close of business on the date on which the Bond Registrar sends the notice of redemption in accordance with Section 9.

(bb) “*Registered Owner*” means, with respect to a Bond, the person in whose name that Bond is registered on the Bond Register. For so long as the City utilizes the book-entry only system for the Bonds under the Letter of Representations, Registered Owner shall mean the Securities Depository.

(cc) “*Rule 15c2-12*” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

(dd) “*SEC*” means the United States Securities and Exchange Commission.

(ee) “*Sale Terms*” means the terms and conditions for the sale of a Series of the Bonds including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, and other terms or covenants.

(ff) “*Securities Depository*” means DTC, any successor thereto, any substitute securities depository selected by the City, or the nominee of any of the foregoing. Any successor or substitute Securities Depository must be qualified under applicable laws and regulations to provide the services proposed to be provided by it.

(gg) “*Series of the Bonds*” or “*Series*” means a series of the Bonds issued pursuant to this ordinance.

(hh) “*State*” means the State of Washington.

(ii) “*System of Registration*” means the system of registration for the City’s bonds and other obligations set forth in Ordinance No. 1732 of the City.

(jj) “*Term Bond*” means each Bond designated as a Term Bond and subject to mandatory redemption in the years and amounts set forth in the Bond Purchase Agreement.

(kk) “*Undertaking*” means the undertaking to provide continuing disclosure entered into pursuant to Section 15 of this ordinance.

Section 2. Findings and Determinations. The City takes note of the following facts and makes the following findings and determinations:

(a) *Authority and Description of Project.* In accordance with RCW 35A.11010 and other applicable law, the City is authorized to undertake the improvements to City Hall comprising the Project. The City is in need of funds to carry out the Project and the City Council finds that it is in the best interests of the City to issue the bonds authorized herein in order to finance the Project.

(b) *Plan of Financing.* Pursuant to applicable law, including without limitation chapters 35.37, 35A.40, 39.36, 39.44, and 39.46 RCW, the City is authorized to issue general obligation bonds for the purpose of financing the Project, which is a municipal purpose. The total expected cost of the Project is approximately \$11,120,000 million, which is expected to be made up of proceeds of the Bonds and other available money of the City, which may include state or federal loans and/or grants, if available.

(c) *Debt Capacity.* The maximum amount of indebtedness authorized by this ordinance is \$11,120,000. Based on the following facts, as of the date of this ordinance, the amount authorized herein is to be issued within the amount permitted to be issued by the City for general municipal purposes without a vote:

- (1) The assessed valuation of the taxable property within the City as ascertained by the last preceding assessment for City purposes (i.e., the assessed valuation for property taxes collected in the calendar year 2023) is \$3,042,683,290.
- (2) The City has limited tax general obligation indebtedness, consisting of bonds and state loans outstanding in the principal amount of \$3,740,000, which is incurred within the limit of up to 1½% of the value of the taxable property within the City permitted for general municipal purposes without a vote.
- (3) The City has no voter-approved unlimited tax general obligation indebtedness outstanding for general municipal purposes; for City-owned water, artificial light, and sewers; or for acquiring or developing open space, park facilities, and capital facilities associated with economic development.

(d) *The Bonds.* For the purpose of providing the funds necessary to carry out the Project and to pay the costs of issuance and sale of the Bonds, the City Council finds that it is in the best interests of the City and its taxpayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Purchase Agreement as approved by the City's Designated Representative consistent with this ordinance.

Section 3. Authorization of Bonds. The City is authorized to borrow money on the credit of the City and issue negotiable limited tax general obligation bonds evidencing indebtedness in one or more Series in aggregate principal amount not to exceed \$11,120,000 to provide funds necessary to carry out the Project and to pay the costs of issuance and sale of the Bonds (including, without limitation, the costs of a bond insurance premium or other credit enhancement, if any). The proceeds of the Bonds allocated to paying the cost of the Project shall be deposited as set forth in Section 8 of this ordinance and shall be used to carry out the Project, or a portion of the Project, in such order of time as the City determines is advisable and practicable.

Section 4. Description of Bonds; Appointment of Designated Representative. The Finance Officer and the Mayor are each independently appointed and authorized to act as the Designated Representative of the City for purposes of this ordinance, to conduct the sale of the Bonds in the manner and upon the terms deemed most advantageous to the City, and to approve the Sale Terms of each Series of the Bonds, with such additional terms and covenants as the Designated Representative deems advisable, within the parameters set forth in Exhibit A, which is attached to this ordinance and incorporated by this reference.

Section 5. Bond Registrar; Registration and Transfer of Bonds.

(a) *Registration of Bonds.* Each Bond shall be issued only in registered form as to both principal and interest and the ownership of each Bond shall be recorded on the Bond Register.

(b) *Bond Registrar; Duties.* Unless otherwise determined by the Finance Officer in the Bond Purchase Agreement, the Fiscal Agent shall be appointed as initial Bond Registrar. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance and the System of Registration. The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

(c) *Bond Register; Transfer and Exchange.* The Bond Register shall contain the name and mailing address of each Registered Owner and the principal amount and number of each Bond held by each Registered Owner. A Bond surrendered to the Bond Registrar may be

exchanged for a Bond or Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same Series, interest rate and maturity. A Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be obligated to exchange any Bond or transfer registered ownership during the period between the applicable Record Date and the next upcoming interest payment or redemption date.

(d) *Securities Depository; Book-Entry Only Form.* Unless otherwise determined by the City's Designated Representative, the Bonds initially shall be issued and held fully immobilized in Book-Entry Form by the Securities Depository in accordance with the provisions of the Letter of Representations. Neither the City nor the Bond Registrar shall have any responsibility or obligation to participants of the Securities Depository or the persons for whom they act as nominees with respect to the Bonds regarding the accuracy of any records maintained by the Securities Depository or its participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the Bond Registrar to the Securities Depository). Registered ownership of a Bond initially held in Book-Entry Form, or any portion thereof, may not be transferred except: (i) to any successor Securities Depository; (ii) to any substitute Securities Depository appointed by the City or such substitute Securities Depository's successor; or (iii) to any person if the Bond is no longer held in Book-Entry Form.

If the Securities Depository resigns from its functions as depository, or upon a determination by the Finance Director to discontinue utilizing the then-current Securities Depository, the Finance Director may appoint a substitute Securities Depository. If the Securities Depository resigns from its functions as depository and no substitute Securities Depository can be obtained, or if the Finance Director determines not to utilize a Securities Depository, then the Bonds shall no longer be held in Book-Entry Form and ownership may be transferred only as provided herein.

(e) Nothing in this ordinance shall prevent the Bond Sale Terms from providing that a Series of the Bonds shall be issued in certificated form without utilizing a Securities Depository, and that the Bonds of such Series shall be registered as of their Issue Date in the names of the Owners thereof, in which case ownership may be transferred only as provided in subsection (c), above.

(f) *DTC Eligibility.* To induce DTC to accept bonds issued by the City as eligible for deposit at DTC, the City approves the form of DTC's Blanket Issuer Letter of Representations (as it may be amended from time to time, the "Letter of Representations"), a copy of which is on file with the Finance Officer, and authorizes the Designated Representative to execute the Letter of Representations and to take all other acts necessary to ensure that the City's bonds are DTC eligible.

#### Section 6. Form and Execution of Bonds.

(a) *Form of Bonds; Signatures and Seal.* Each Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. Each Bond shall be signed by the Mayor and the City Clerk, either or both of whose signatures may be manual or in facsimile, and

the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. If any officer whose manual or facsimile signature appears on a Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar, or issued or delivered by the City, that Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on its Issue Date.

(b) *Authentication.* Only a Bond bearing a Certificate of Authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: “Certificate Of Authentication. This Bond is one of the fully registered City of Port Orchard, Washington, Limited Tax General Obligation Bonds, 2023, described in the Bond Ordinance.” The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

Section 7. Payment of Bonds. Principal of and interest on each Bond shall be payable in lawful money of the United States of America. Principal of and interest on each Bond held in Book-Entry Form shall be payable in the manner set forth in the Letter of Representations. Interest on each Bond not held in Book-Entry Form shall be payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner, unless otherwise specified in the Bond Sale Terms. Principal of each Bond not held in Book-Entry Form is payable upon presentation and surrender of the Bond by the Registered Owner to the Bond Registrar. The Bonds are not subject to acceleration under any circumstances.

Section 8. Funds and Accounts; Deposit of Proceeds.

(a) *Bond Fund.* The Bond Fund has been previously created as a special fund of the City for the sole purpose of paying principal of and interest on the Bonds and other general obligation bonds of the City. The principal of and interest on the Bonds shall be paid out of the Bond Fund. All amounts allocated to the payment of the principal of and interest on the Bonds shall be deposited in the Bond Fund as necessary for the timely payment of amounts due with respect to the Bonds. Until needed to pay principal of and interest on the Bonds, the City may invest money in the Bond Fund temporarily in any legal investment. Any investment earnings shall be retained in the Bond Fund and used for the purposes of that fund. Bond proceeds in excess of the amounts needed to pay the costs of the Project and the costs of issuance, if any, shall be deposited into the Bond Fund.

(b) *Project Fund.* The Finance Officer shall designate one or more Project Funds to be used for the purposes of paying the costs of the Project. Proceeds received from the sale and



delivery of the Bonds shall be deposited into the Project Fund and used to pay the costs of the Project and costs of issuance of the Bonds. Until needed to pay such costs, the City may invest those proceeds temporarily in any legal investment, and the investment earnings shall be retained in the Project Fund and used for the purposes of that fund, except that earnings subject to a federal tax or rebate requirement (if applicable) may be withdrawn from the Project Fund and used for those tax or rebate purposes.

Section 9. Redemption Provisions and Purchase of Bonds.

(a) *Optional Redemption.* The Bonds shall be subject to redemption at the option of the City on terms acceptable to the Designated Representative, as set forth in the Bond Purchase Agreement, consistent with the parameters set forth in Exhibit A.

(b) *Mandatory Redemption.* Each Bond that is designated as a Term Bond in the Bond Purchase Agreement shall be called for redemption at a price equal to the stated principal amount to be redeemed, plus accrued interest, on the dates and in the amounts as set forth in the Bond Purchase Agreement. If a Term Bond is redeemed under the optional redemption provisions, defeased or purchased by the City and surrendered for cancellation, the principal amount of the Term Bond so redeemed, defeased or purchased (irrespective of its actual redemption or purchase price) shall be credited against one or more scheduled mandatory redemption installments for that Term Bond. The City shall determine the manner in which the credit is to be allocated and shall notify the Bond Registrar in writing of its allocation prior to the earliest mandatory redemption date for that Term Bond for which notice of redemption has not already been given.

(c) *Selection of Bonds for Redemption; Partial Redemption.* If fewer than all of the outstanding Bonds are to be redeemed at the option of the City, the City shall select the Series and maturities to be redeemed. If fewer than all of the outstanding Bonds of a maturity of a Series are to be redeemed, the Securities Depository shall select Bonds registered in Book-Entry Form to be redeemed in accordance with the Letter of Representations, and the Bond Registrar shall select all other Bonds to be redeemed randomly in such manner as the Bond Registrar shall determine. All or a portion of the principal amount of any Bond that is to be redeemed may be redeemed in any Authorized Denomination. If less than all of the outstanding principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same Series, maturity and interest rate in any Authorized Denomination in the aggregate principal amount to remain outstanding.

(d) *Notice of Redemption.* Notice of redemption of each Bond held in Book-Entry Form shall be given in accordance with the Letter of Representations. Notice of redemption of each other Bond, unless waived by the Registered Owner, shall be given by the Bond Registrar not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be satisfied when notice has been mailed as so provided, whether or not it is actually received by an Owner. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required), to each Rating Agency, and to such other persons and with such additional information

as the Finance Officer shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

(e) *Rescission of Optional Redemption Notice.* In the case of an optional redemption, the notice of redemption may state that the City retains the right to rescind the redemption notice and the redemption by giving a notice of rescission to the affected Registered Owners at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and each Bond for which a notice of optional redemption has been rescinded shall remain outstanding.

(f) *Effect of Redemption.* Interest on each Bond called for redemption shall cease to accrue on the date fixed for redemption, unless either the notice of optional redemption is rescinded as set forth above, or money sufficient to effect such redemption is not on deposit in the Bond Fund or in a trust account established to refund or defease the Bond.

(g) *Purchase of Bonds.* The City reserves the right to purchase any or all of the Bonds offered to the City at any time at any price acceptable to the City plus accrued interest to the date of purchase.

Section 10. Failure To Pay Bonds. If the principal of any Bond is not paid when the Bond is properly presented at its maturity or date fixed for redemption, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

Section 11. Pledge of Taxes. The Bonds constitute a general indebtedness of the City and are payable from tax revenues of the City and such other money as is lawfully available and pledged by the City for the payment of principal of and interest on the Bonds. For as long as any of the Bonds are outstanding, the City irrevocably pledges that it shall, in the manner provided by law within the constitutional and statutory limitations provided by law without the assent of the voters, include in its annual property tax levy amounts sufficient, together with other money that is lawfully available, to pay principal of and interest on the Bonds as the same become due. The full faith, credit and resources of the City are pledged irrevocably for the prompt payment of the principal of and interest on the Bonds and such pledge shall be enforceable in mandamus against the City.

Section 12. Tax Covenants; Designation of Bonds as “Qualified Tax Exempt Obligations.”

(a) *Preservation of Tax Exemption for Interest on Bonds.* The City covenants that it will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bonds or other funds of the City treated as proceeds of the Bonds that will cause interest on the Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirements of Section 148

of the Code are applicable to the Bonds, take all actions necessary to comply (or to be treated as having complied) with those requirements in connection with the Bonds.

(b) *Post-Issuance Compliance.* The Finance Officer is authorized to approve and implement the City's written procedures to facilitate compliance by the City with the covenants in this ordinance, the continuing disclosure undertaking (if any), and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bonds from being included in gross income for federal tax purposes.

(c) *Designation of a Series of the Bonds as "Qualified Tax-Exempt Obligations."* The Designated Representative may designate any Series of the Bonds as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code, if the following conditions are met:

- (1) the Series does not constitute "private activity bonds" within the meaning of Section 141 of the Code;
- (2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during the calendar year in which the Series is issued will not exceed \$10,000,000; and
- (3) the amount of tax-exempt obligations, including the Series, designated by the City as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Series is issued does not exceed \$10,000,000.

Section 13. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to State law or use money available from any other lawful source to carry out a refunding or defeasance plan, which may include (a) paying when due the principal of and interest on any or all of the Bonds (the "defeased Bonds"); (b) redeeming the defeased Bonds prior to their maturity; and (c) paying the costs of the refunding or defeasance. If the City sets aside in a special trust fund or escrow account irrevocably pledged to that redemption or defeasance (the "trust account"), money and/or Government Obligations maturing at a time or times and bearing interest in amounts sufficient to redeem, refund or defease the defeased Bonds in accordance with their terms, then all right and interest of the Owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. Thereafter, the Owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds solely from the trust account and the defeased Bonds shall be deemed no longer outstanding. In that event, the City may apply money remaining in any fund or account (other than the trust account) established for the payment or redemption of the defeased Bonds to any lawful purpose.

Unless otherwise specified by the City in a refunding or defeasance plan, notice of refunding or defeasance shall be given, and selection of Bonds for any partial refunding or defeasance shall be conducted, in the manner prescribed in this ordinance for the redemption of Bonds.

Section 14. Sale and Delivery of the Bonds.

(a) *Manner of Sale of Bonds; Delivery of Bonds.* The Designated Representative is authorized to sell each Series of the Bonds by negotiated sale or private placement, based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials and staff, Bond Counsel and other advisors. In determining the method of sale of a Series and accepting the Sale Terms for that Series, the Designated Representative shall take into account, among other considerations, those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City.

(b) *Procedure for Negotiated Sale or Private Placement.* If the Designated Representative determines that a Series of the Bonds is to be sold by negotiated sale or private placement, the Designated Representative shall select one or more Purchasers with which to negotiate such sale. The Bond Purchase Agreement for each Series of the Bonds shall set forth the Sale Terms for that Series. The Designated Representative is authorized to execute a Bond Purchase Agreement for each Series of the Bonds on behalf of the City, so long as the terms provided therein are consistent with the terms of this ordinance.

(c) *Preparation, Execution and Delivery of the Bonds.* Each Series of the Bonds will be prepared at City expense and will be delivered to the Purchaser of such Series in accordance with the applicable Bond Purchase Agreement, together with the approving legal opinion of Bond Counsel regarding that Series of the Bonds.

Section 15. Official Statement; Continuing Disclosure.

(a) *Preliminary Official Statement Deemed Final.* The Designated Representative shall review and, if acceptable to him or her, approve the preliminary Official Statement prepared in connection with each sale of a Series of the Bonds to the public or through a Purchaser as a placement agent. For the sole purpose of the Purchaser's compliance with paragraph (b)(1) of Rule 15c2-12, if applicable, the Designated Representative is authorized to deem that preliminary Official Statement final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12. The City approves the distribution to potential purchasers of the Bonds of a preliminary Official Statement that has approved by the Designated Representative and been deemed final, if applicable, in accordance with this subsection.

(b) *Approval of Final Official Statement.* The City approves the preparation of a final Official Statement for each Series of the Bonds to be sold to the public in the form of the preliminary Official Statement that has been approved and deemed final in accordance with subsection (a), with such modifications and amendments as the Designated Representative deems necessary or desirable, and further independently authorizes each of the Designated Representative and the Mayor to execute and deliver such final Official Statement to the

Purchaser if required under Rule 15c2-12. The City authorizes and approves the distribution by the Purchaser of the final Official Statement so executed and delivered to purchasers and potential purchasers of a Series of the Bonds.

(c) *Undertaking to Provide Continuing Disclosure.* If necessary to meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to the Purchaser acting as a participating underwriter for a Series of the Bonds, the Designated Representative is authorized to execute a written undertaking to provide continuing disclosure for the benefit of holders of a Series of the Bonds in substantially the form attached as Exhibit B.

Section 16. Supplemental and Amendatory Ordinances. The City may supplement or amend this ordinance for any one or more of the following purposes without the consent of any Owners of the Bonds:

(a) To add covenants and agreements that do not materially adversely affect the interests of Owners, or to surrender any right or power reserved to or conferred upon the City.

(b) To cure any ambiguities, or to cure, correct or supplement any defective provision contained in this ordinance in a manner that does not materially adversely affect the interest of the Beneficial Owners of the Bonds.

Section 17. General Authorization and Ratification. The Mayor, the Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of each Series of the Bonds to the Purchaser thereof and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

Section 18. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 19. Effective Date of Ordinance. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Port Orchard, Washington, at an open public meeting thereof, this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

---

Bond Counsel



**EXHIBIT A**  
**DESCRIPTION OF THE BONDS**

- |     |                           |   |
|-----|---------------------------|---|
| (a) | Principal Amount.         | The Bonds may be issued in one or more Series and shall not exceed the aggregate principal amount of \$11,120,000.  |
| (b) | Date or Dates.            | Each Bond shall be dated its Issue Date, which date may not be later than one year after the effective date of this ordinance.  |
| (c) | Denominations, Name, etc. | The Bonds shall be issued in Authorized Denominations and shall be numbered separately in the manner and shall bear any name and additional designation as deemed necessary or appropriate by the Designated Representative.  |
| (d) | Interest Rate(s).         | Unless otherwise provided for in connection with a private placement of the Bonds, each Bond shall bear interest at a fixed rate per annum (computed on the basis of a 360-day year of twelve 30-day months) from the Issue Date or from the most recent date for which interest has been paid or duly provided for, whichever is later. One or more rates of interest may be fixed for the Bonds such that the true interest cost to the City for each Series of the Bonds does not exceed 6.0%. |
| (e) | Payment Dates.            | Unless otherwise provided for in connection with a private placement of the Bonds, interest shall be payable semiannually on dates acceptable to the Designated Representative, and principal payments shall commence on a date acceptable to the Designated Representative and shall be payable at maturity or in mandatory redemption installments on dates acceptable to the Designated Representative.  |
| (f) | Final Maturity.           | The final maturity of any Series of the Bonds shall be no later than December 1, 2044.  |
| (g) | Redemption Rights.        | <p>The Designated Representative may approve in the Bond Purchase Agreement provisions for the optional and mandatory redemption of Bonds, subject to the following:</p> <p>(1) <u>Optional Redemption.</u> Any Bond may be designated as being (A) subject to redemption at the option of the City prior to its maturity date on</p>   |

the dates and at the prices set forth in the Bond Purchase Agreement; or (B) not subject to redemption prior to its maturity date. If a Bond is subject to optional redemption prior to its maturity, it must be subject to such redemption on one or more dates occurring not more than 10½ years after the Issue Date.

- (2) Mandatory Redemption. Any Bond may be designated as a Term Bond, subject to mandatory redemption prior to its maturity on the dates and in the amounts set forth in the Bond Purchase Agreement.

(h) Price.

The purchase price for each Series of the Bonds may not be less than 98% or more than 140% of the stated principal amount of that Series.

(i) Other Terms and Conditions.

- (1) A Series of the Bonds may not be issued if it would cause the indebtedness of the City to exceed the City's legal debt capacity on the Issue Date.
- (2) The Designated Representative may determine whether it is in the City's best interest to provide for bond insurance or other credit enhancement; and may accept such additional terms, conditions and covenants as he or she may determine are in the best interests of the City, consistent with this ordinance.

**Form of  
UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE**

**City of Port Orchard, Washington  
Limited Tax General Obligation Bonds, 2023**

The City of Port Orchard, Washington (the “City”), makes the following written Undertaking for the benefit of holders of the above-referenced bonds (the “Bonds”), for the sole purpose of assisting the Purchaser in meeting the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to a participating underwriter for the Bonds. Capitalized terms used but not defined below shall have the meanings given in Ordinance No. \_\_\_\_ of the City (the “Bond Ordinance”).

(a) Undertaking to Provide Annual Financial Information and Notice of Listed Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent, to the MSRB, in an electronic format as prescribed by the MSRB, accompanied by identifying information as prescribed by the MSRB:

- (i) Annual financial information and operating data of the type included in the final official statement for the Bonds and described in paragraph (b) (“annual financial information”). The timely filing of unaudited financial statements shall satisfy the requirements and filing deadlines pertaining to the filing of annual financial statements under subsection (b), provided that audited financial statements are to be filed if and when they are otherwise prepared and available to the City;
- (ii) Timely notice (not in excess of 10 business days after the occurrence of the event) of the occurrence of any of the following events with respect to the Bonds: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 – TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds; (7) modifications to rights of holders of the Bonds, if material; (8) bond calls (other than scheduled mandatory redemptions of Term Bonds), if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the City, as such “Bankruptcy Events” are defined in Rule 15c2-12; (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; (15) default, event of

acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation (as such term is defined below) of the City, any of which reflect financial difficulties; and (16) incurrence of a Financial Obligation of the City or agreement to covenants, events of default, remedies, priority rights or other similar terms of a Financial Obligation of the City, any of which affect security holders.

“Financial Obligation” means: (a) a debt obligation; (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of (a) or (b). The term “Financial Obligation” does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12 and the issuer thereof has entered into a continuing disclosure undertaking for such municipal securities.

- (iii) Timely notice of a failure by the City to provide required annual financial information on or before the date specified in paragraph (b). The City shall not be required to file a notice of failure to file its annual financial statements if it timely files unaudited financial statements and commits to the prompt filing of the audit if and when such audit becomes available.

(b) Type of Annual Financial Information Undertaken to be Provided. The annual financial information that the City undertakes to provide in paragraph (a):

- (i) Shall consist of (1) annual financial statements of the City prepared in accordance with applicable generally accepted accounting principles applicable to governmental units such as the City (and with the exceptions noted therein), as such principles may be changed from time to time and as permitted by State law; (2) principal amount of general obligation bonds outstanding at the end of the applicable fiscal year; (3) assessed valuation for that fiscal year; and (4) property tax levy amounts and rates for that fiscal year;
- (ii) Shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City’s fiscal year ending December 31, 20\_\_; and
- (iii) May be provided in a single or multiple documents, and may be incorporated by specific reference to documents available to the public on the Internet website of the MSRB or filed with the SEC.

(c) Amendment of Undertaking. This Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any Owner or holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency or the MSRB, under the circumstances and in the manner permitted by Rule 15c2-12, including:

- (i) The amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted;
  - (ii) The undertaking, as amended, would have complied with the requirements of the rule at the time of the primary offering, after taking into account any amendments or interpretations of the rule, as well as any change in circumstances; and
  - (iii) The amendment does not materially impair the interests of holders, as determined either by parties unaffiliated with the City (e.g., bond counsel or other counsel familiar with federal securities laws), or by approving vote of bondholders pursuant to the terms of the Bond Ordinance at the time of the amendment.
- (d) Beneficiaries. This Undertaking shall inure to the benefit of the City and the holder of each Bond, and shall not inure to the benefit of or create any rights in any other person.
- (e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if the provisions of Rule 15c2-12 that require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of Bond Counsel delivered to the City, and the City provides timely notice of such termination to the MSRB.
- (f) Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with this Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with this Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take action to compel the City or other obligated person to comply with this Undertaking, including seeking an order of specific performance from an appropriate court.
- (g) Designation of Official Responsible to Administer Undertaking. The Finance Officer or his or her designee is the person designated, in accordance with the Bond Ordinance, to carry out the Undertaking in accordance with Rule 15c2-12, including, without limitation, the following actions:
- (i) Preparing and filing the annual financial information undertaken to be provided;
  - (ii) Determining whether any event specified in paragraph (a) has occurred, assessing its materiality, where necessary, with respect to the Bonds, and preparing and disseminating any required notice of its occurrence;
  - (iii) Determining whether any person other than the City is an "obligated person" within the meaning of Rule 15c2-12 with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of listed events for that person required under Rule 15c2-12;

- (iv) Selecting, engaging and compensating designated agents and consultants, including financial advisors and legal counsel, to assist and advise the City in carrying out this Undertaking; and
- (v) Effecting any necessary amendment of this Undertaking.

## CERTIFICATION

I, the undersigned, City Clerk of the City of Port Orchard, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. \_\_\_\_ (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on \_\_\_\_\_, 2023, as that ordinance appears on the minute book of the City.

2. The Ordinance will be in full force and effect five days after publication in the City's official newspaper, which publication date is \_\_\_\_\_, 2023.

3. A quorum of the members of the City Council was present throughout the meeting and at least four of the members of the Council voted in the proper manner for the passage of the Ordinance.

Dated: \_\_\_\_\_, 2023.

CITY OF PORT ORCHARD, WASHINGTON

\_\_\_\_\_  
City Clerk



## City of Port Orchard Work Study Session Executive Summary

---

**Issue Title:** Council Policy Regarding Bond/Levy Endorsements

**Meeting Date:** September 19, 2023

**Time Required:** 15 Minutes

**Attendees:** Charlotte Archer, City Attorney; Brandy Wallace, City Clerk

**Action Requested At This Meeting:** Staff are seeking feedback and direction on proposed policy language for a Council policy regarding candidate/ballot measure endorsements.

**Issue:** The City Council desires to adopt a policy to provide clarity for the public on the Council's approach to endorsements or opposition of candidates/ballot measures.

**Background:** Historically, prior City Council's have made collective statements to endorse certain ballot measures, including pending bonds or levies. RCW 42.17A.555 governs the ability of a legislative body to speak in favor of or opposition to a ballot measure or candidate, and requires a duly noticed public hearing prior to the adoption of a resolution of support or opposition by the body (among other requirements). Recently, this City Council requested staff develop a policy to clarify that the Council will not speak on candidates/ballot measures, as doing so can interfere with the independent assessment of proposed candidates and legislation by the residents of Port Orchard. Staff reviewed similar policies utilized by neighboring jurisdictions and developed proposed language consistent with these concerns. Copies of sample policies from the City of Poulsbo and City of Bremerton are attached for reference.

As the City Council's rules of procedure are codified at Port Orchard Municipal Code Chapter 2.04—so that these rules and associated policies are preserved for historical record—staff recommends placing the proposed policy in Chapter 2.04 POMC.

**Relationship to Comprehensive Plan:** N/A

**Recommendation:** Receive briefing and provide feedback on draft policy.

**Attachments:** [Draft] Ordinance Adopting POMC 2.04.XXX, Regarding Endorsements  
Courtesy Copy of City of Poulsbo Council Rules  
Courtesy Copy of City of Bremerton Council Rules



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ADOPTING PORT ORCHARD MUNICIPAL CODE SECTION 2.04.XXX REGARDING COUNCIL ENDORSEMENTS; PROVIDING FOR SEVERABILITY AND PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the Port Orchard City Council has adopted rules pertaining to the conduct of the Council, including the conduct of public meetings, codified at Port Orchard Municipal Code ("POMC") Chapter 2.04; and

**WHEREAS**, the City Council desires to adopt a new rule to govern the City Council's communications with the public on pending ballot measures; and

**WHEREAS**, RCW 42.17A.555 limits the ability of a legislative body to speak in favor of or opposition to a ballot proposition as body, or to utilize their office or any public facilities for these purposes; and

**WHEREAS**, the City Council finds that endorsing or opposing a ballot measure can undermine voter autonomy and the electoral process; and

**WHEREAS**, accordingly, the City Council finds that it is in the best interests of transparency and the citizens of the City of Port Orchard to adopt new Section 2.04.XXX POMC to state the Council does not endorse or otherwise collectively speak on pending ballot measures; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.** New Section 2.04.XXX POMC, *Endorsements*, is hereby adopted to read as follows:

The City Council will not endorse or oppose a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition placed on a ballot for the vote of the people. Individual endorsement or opposition by individual Councilmembers shall only be made in compliance with RCW 42.17A.555, as amended, and shall be clearly identified as the statement of an individual citizen.

**SECTION 2. Severability.** Should any portion of this ordinance be held to be unconstitutional or unlawful 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.

**SECTION 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this \_\_ day of September 2023.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

SPONSOR:

\_\_\_\_\_  
Brandy Wallace, MMC, City Clerk

\_\_\_\_\_  
, Councilmember

APPROVED AS TO FORM:

\_\_\_\_\_  
Charlotte A. Archer, City Attorney

PUBLISHED:  
EFFECTIVE DATE:

# **POULSBO CITY COUNCIL**



# **RULES OF PROCEDURE**

## **1.7 COUNCIL COMMUNICATION AND BALLOT ENDORSEMENTS:**

- (1) Any time Councilmembers communicate with the public, they shall include a disclaimer that they are speaking only for themselves and not speaking for any other member or the Council as a whole. Personal opinions and comments which differ from the Council majority may be expressed if the Councilmember clarifies that the statements do not represent the Council's or City's position.
- (2) The Council, as a whole, will not endorse those measures placed on a ballot for the vote of the people. Individual endorsement by Councilmembers shall only be made and stated as an individual citizen.

**1.8 VIOLATION OF CITY ORDINANCES:** Members concerned with a violation of a city ordinance shall contact the Mayor or appropriate department head and explain the violation and its location. Members shall not act as an enforcement agent.

**1.9 RULES OF PROCEDURE REVIEW:** The City Clerk will schedule a workshop to review Council's Rules of Procedure during January of every even-numbered year or at such time deemed necessary.

## **2. TYPES OF MEETINGS**

**2.1 REGULAR COUNCIL MEETINGS:** The Council shall meet on the first three Wednesdays of each month at 7:00 PM. When a Council meeting falls on a holiday, the Council may determine an alternate day for the meeting or cancel the meeting. The Council may reschedule regular meetings to a different date or time by motion. The location of the meetings shall be the Council Chambers at city hall, unless specified otherwise by a majority vote of the Council. All regular and special meetings shall be public pursuant to the RCW Chapter 42.30 and the Open Public Meetings Act.

**2.2 SPECIAL MEETINGS:** Special meetings may be called by the Mayor or any four (4) members of the Council. The City Clerk shall prepare a notice of the special meeting stating the time, place and business to be transacted. The City Clerk shall attempt to notify each member of the Council, either by telephone or otherwise, of the special meeting. The City Clerk shall

# Bremerton City Council

## Rules & Procedures



deemed approved by an affirmative vote of a majority of those Council members present, unless otherwise provided by law. Any such action shall contain only a single subject matter and may not be amended to include a different subject.

**2. Submittal:** No ordinance shall be submitted to the Council for consideration until approved as to form and legality by the City Attorney and copies have been furnished to Council Members and the City Clerk. No such ordinance shall contain any interlineations or marginal notes.

**3. Presentations:** Reading of ordinances and resolutions at all Council meetings shall be deemed sufficient by the reading of a brief synopsis of the title of the ordinance or the purpose of the resolution. The full text of an ordinance or resolution under consideration by the Council will be provided to any member of the public upon request.

**4. Reading of Ordinances:** Every ordinance shall have one reading except that, upon a request of a Council Member, an ordinance shall have two or more readings unless otherwise directed by the Council.

## **RULE 9 - MISCELLANEOUS**

**1. Agenda:** By direction of the Council President, the Legislative Office Manager shall prepare the Agenda for each session of the Council in regular order in accordance with these rules, which order shall not be departed from, except as provided in these rules. Such Agenda shall include all resolutions, ordinances and matters requested by any Council Member, or the Mayor, with no items deleted from the Agenda except as provided in Rule 4 of these rules.

**2. Public Comment on Agenda Items:** Any person is provided an opportunity to comment on any Agenda item at the time the item is discussed and prior to a vote by the Council. Such remarks must be confined to those that are germane and relevant to the item being discussed and shall be subject to a time limit. If numerous speakers are addressing the issue, the Council President may further restrict speaker time. Written comments shall, to all intents and purposes, be considered the same as oral comments.

**3. Public Recognition:** Any member of the public is provided an opportunity to address the Council and the Mayor on issues not on the Agenda. No member of the public shall engage in discussion or comment which a) is obscene, indecent or libelous; b) promotes the sale of products, or services; c) promotes any lottery or contest which offers prizes dependent in whole or in part upon lot or chance. It is suggested that questions from the public posed to the Council that cannot be answered at the Council meeting should be put in writing in order to receive a written response from the appropriate party or parties within a reasonable time. Letters addressed to City officials will not be read in Public Recognition unless an exception is granted by Council President based upon exceptional circumstances. Argumentative Rebuttal is not permitted during Public Recognition.

**4. Ballot Issues:** During the election period, beginning on the deadline for elective office or ballot issues, or from the time an individual announces candidacy, whichever comes first, through the November General Election, all announcements or advertising concerning candidates are

prohibited. Discussion of ballot issues is prohibited after the issue has qualified for the ballot. Meetings for political parties may be announced, with the exception of fundraising events (i.e. dinners, drawings, etc.) or meetings where the title of the function expresses support or opposition for any candidate, political party, or issue.

**5. Public Hearings:** The Council President may allocate the time allotted to Public Hearing equally among the members of the public who wish to speak.

**6. Complaints:** Personal complaints, especially those of a derogatory nature against any official or employee of the City shall not be discussed at a Council meeting. Citizens wishing to make such complaints shall be instructed that the same should be first processed and handled through the Mayor's office. Then, if the citizen feels appropriate action has not been taken, it shall be proper for the complaint to be communicated in writing to the members of the Council. Complaints against a Council Member shall be submitted to the Council President. If the complaint is against the Council President, the complaint shall be submitted to the Vice-President. Acceptance by the Council of a written complaint shall not, however, give rise to public discussion thereon. The City Attorney should be consulted regarding confidentiality, rights to privacy and other legal concerns.

**7. Amendments to Rules & Procedures:** Amendments to these rules shall be made by resolution of the Council.

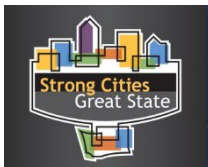
**8. The City Clerk:** The City Clerk, or duly authorized representative, shall attend all business meetings of the City Council and maintain a permanent journal of its proceedings. All votes shall be recorded by calling the names of each member on a positional rotation basis with Council President's vote called last.

**9. Maintain Record:** All of the regular and special meetings of the City Council and each and every part thereof shall be recorded electronically. These records shall be maintained for a period in conformance with Chapter 40.14 RCW.

**10. Prepare Minutes:** Subsequent to each meeting, the Legislative Office Manager shall prepare brief and concise action minutes of all Council meetings and submit the same to the Council for approval. Such minutes shall contain an accurate resume of official Council actions, with reference to all matters before it.

**11. Verbatim Transcript:** No member of the Council, nor any member of the administrative staff of the City, shall be empowered or authorized to require the Legislative Office Manager to insert in said official minutes any verbatim transcript of all or any part of the proceedings. Verbatim transcripts shall be made a part of the minutes only when authorized by a majority vote of the entire Council, made at the meeting wherein such verbatim request is made.

**12. Non-Compliance with rules and Waiver:** Failure of a Council member to challenge the non-compliance of Council proceedings with any rule or procedure herein, prior to the vote or other action taken on the item under consideration, shall constitute a waiver and such non-compliance



## Guidelines for elected and appointed officials' participation in elections activity

Elected officials and city staff should understand Public Disclosure Commission (PDC) guidelines before participating in any elections activities, including taking a position on a ballot measure or endorsing a candidate for political office. Below are some common examples of activities city officials may and may not do. It is not intended to be comprehensive. A complete listing of the PDC Guidelines for [Local Government Agencies in Election Campaigns](#) can be found on their website [pdc.wa.gov](http://pdc.wa.gov). If you have any questions, please call the PDC at (360) 753-1111 or consult your jurisdiction's legal counsel.

### General provisions

#### Activities that are allowed:

- City employees or elected officials may, on their own time during non-work hours (and not with the use of city property or equipment), participate in campaign-related activities.
- Elected officials may make statements supporting or opposing an initiative or referendum in response to a specific media inquiry. All city officials may respond to requests for factual information as part of their normal job duty.
- City officials may use their title for identification purposes in endorsements supporting or opposing a candidate or an initiative or referendum, but should not use public facilities or equipment for communications and should make clear that it is their personal view.
- City employees or elected officials may place on their individual agency calendar basic information if they are scheduled to be out of the office to attend campaign events.
- A city may provide a facility, if it is available, for a public forum, making arrangements for all sides to be represented.
- A city may allow use of a public meeting space, if it is available as normal and regular conduct, to community groups for campaign activities. If a city normally charges for the use of these facilities, then the city must charge all users equally.
- City employees may wear lapel buttons at work if the city has a policy permitting employees to wear political buttons.
- Private employee vehicles displaying bumper stickers may be parked on public property.
- City officials may encourage staff and members of the public to vote, as long as such encouragement routinely occurs for other elections.

#### Activities that are *not* allowed:

- City employees or elected officials may not use public facilities, supplies, or equipment, for any campaign purpose. This includes phones, copiers, mail facilities, computers, email, websites, social media, uniforms purchased with city funds, and paper products. City officials may not reimburse the city for usage of these facilities. City officials may not use city vehicles to transport or display political material.
- City officials may not promote or oppose a candidate or ballot measure during work hours. This includes gathering signatures, distributing materials, coordinating speakers/fundraising/ phone banks, etc. It does not include elected official statements on ballot measures in response to a specific media inquiry.
- City officials may not maintain individual campaign-related events on agency-wide distributed calendars.
- City employees may not oppose or support an issue or candidate before a civic group on city work time. It must be on personal time.
- City officials may not post signs advocating for or against candidates or ballot measures on any city property.
- City employees or elected officials may not pressure city employees to participate in campaign activities for a ballot measure or candidate, take a position, or coordinate informational activities with campaign work.





## Ballot measures

### Activities that are allowed:

- Elected officials and city staff may speak at community forums and clubs during regular work hours to make an objective and fair presentation of the facts on a ballot measure if it is normal and regular conduct. City equipment (projector, laptop) may be used for the presentation.
- Elected officials may attend an event any time during the day and give their opinion about a ballot measure, as long as they are not being compensated by the city or using any public equipment, facility or vehicle (with exceptions for specific inquiries).
- City employees or elected officials may use their job title with the city in a letter to the editor (written on their own time using their own computer). They must clarify that they are expressing their own opinion, and not speaking for the city.
- A city employee may respond to a political inquiry by providing routine factual information if that is part of their normal job duty.
- Members of an elected council may vote to support or oppose an initiative or referendum. If your council plans to vote to take a position on an initiative or referendum, the notice of the meeting when the vote will be taken must include the title and number of the ballot proposition. Council members or the public must have an equal opportunity to express an opposing view.
- Elected officials may make statements supporting or opposing an initiative or referendum in response to a specific media inquiry. All city officials may respond to requests for factual information as part of their normal job duty.
- A city may use its website, newsletter, or other publications to provide citizens with information about an issue that directly impacts the city, looking at all available information. If you routinely provide objective and fair facts on a ballot measure or controversial issue, you may present objective and fair presentation of facts on the ballot propositions.
- If your website or newsletter publishes resolutions or reports on council activity, you may report on action taken on a resolution.
- Distribution of all information must be to "normal and regular" recipients, using the publication's regular schedule. Repeated distribution of the same information may be considered campaign activity by the PDC.

- A city website may be used to inform citizens about anticipated ballot measure impacts, and allow readers to explore an issue through detailed links, if part of normal conduct and do not link to campaigns. Websites may be updated according to the city's normal procedures.
- City employees may provide in-house contingency planning (what if an initiative or referendum passes). This isn't a public activity. This includes researching the impact of a ballot proposition for the purpose of gathering facts.
- City employees may respond to requests for public records even if the records will be used in support or opposition of a measure, as long as the record isn't exempt from disclosure under state law.

### Activities that are *not* allowed:

- City officials may not use public facilities, supplies or equipment, for any campaign purpose. This includes phones, copiers, mail facilities, computers, email, social media, websites, uniforms purchased with city funds, and paper products. City officials may not reimburse the city for usage of these facilities. City officials may not use city vehicles to transport or display political material.
- City officials may not promote or oppose a candidate or ballot measure during work hours. This includes gathering signatures, distributing materials, coordinating speakers/fundraising/phone banks, etc. It does not include elected official statements on ballot measures in response to a specific media inquiry.
- City officials may not produce information that targets specific subgroups. This does not refer to mailing to groups that are on the city's regular distribution list.
- City employees may not oppose or support an issue or candidate before a civic group on city work time. It must be on personal time.
- City officials may not have a petition available for signature at city hall, or other city facility or vehicle.
- City officials may not post signs advocating for or against candidates or ballot measures on any city property.
- City employees or elected officials may not pressure city employees to participate in campaign activities for a ballot measure or candidate, take a position or coordinate informational activities with campaign work.



# Orchard Plaza

Preliminary Concept Design  
September 2023





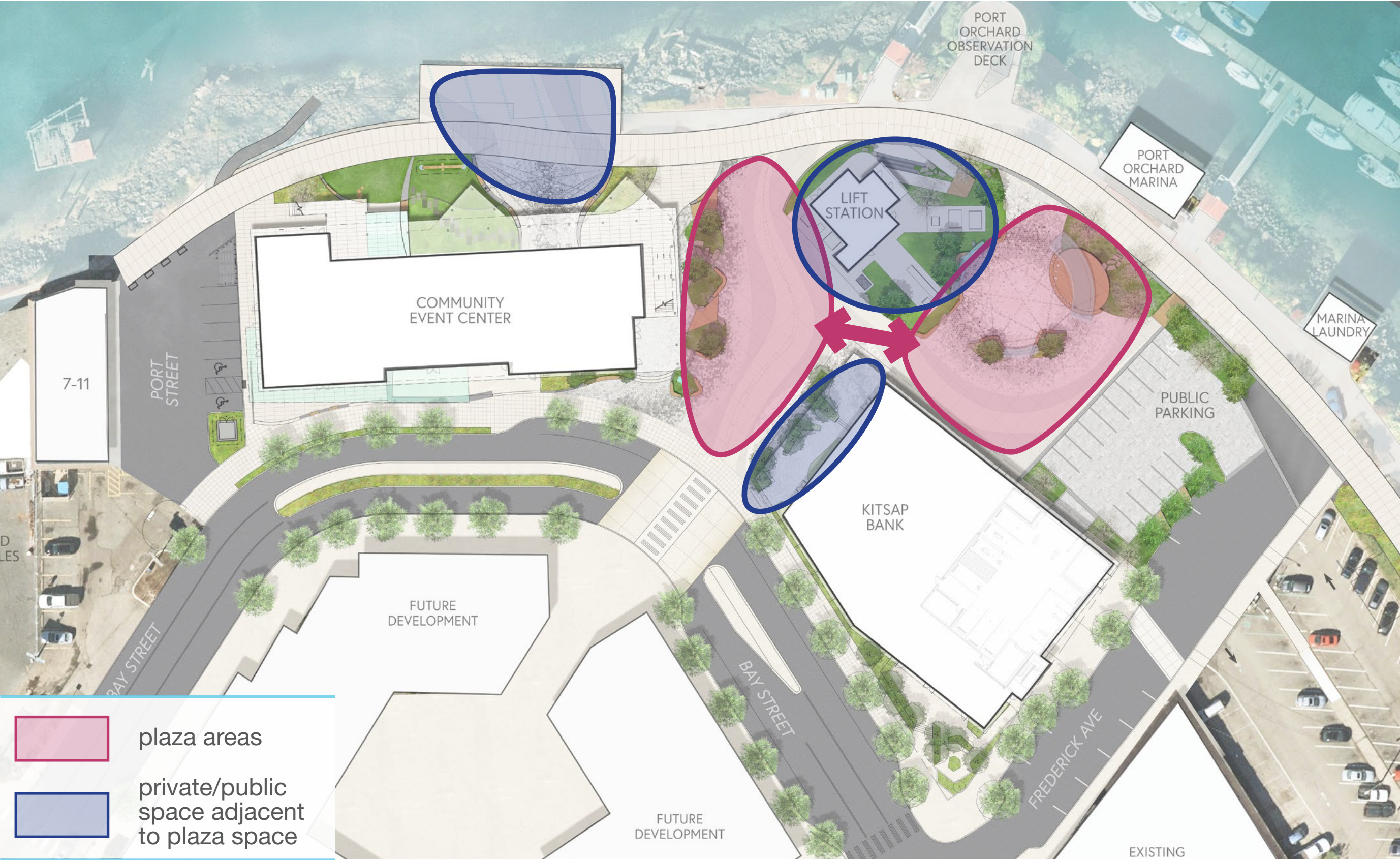
# Orchard Plaza | Site Context



The organic nature of the plaza, inspired by the natural formation of the shoreline, connects the individual buildings to support a unified space.

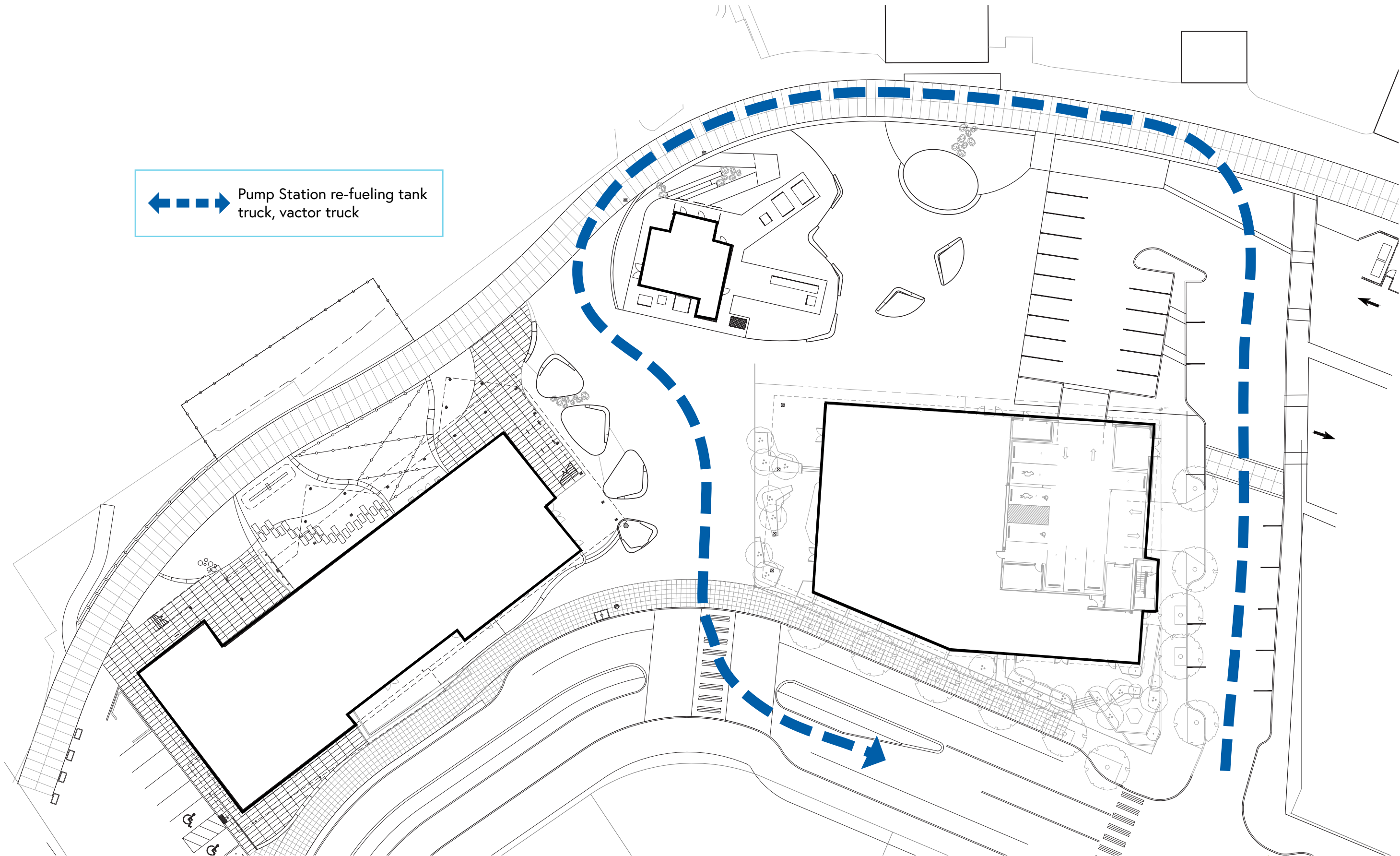


# Orchard Plaza | Site Context





# Orchard Plaza | Site Circulation





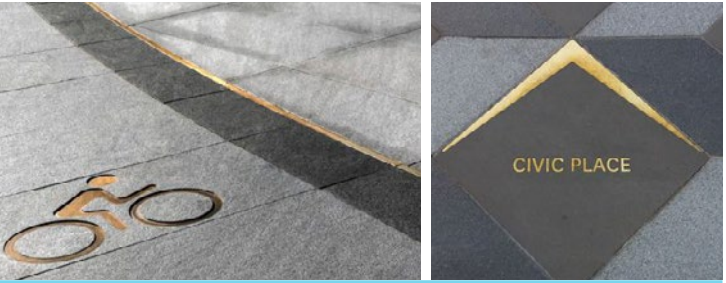
# Orchard Plaza | Site Concept



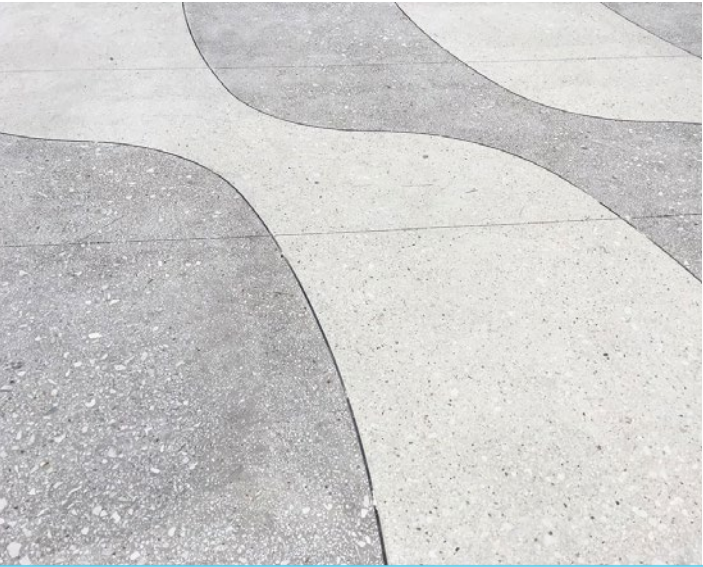
- The space is pulled together with organic geometries
- Flexibility is Key!
- Great space for both event days and non event days
- High quality of materials - this is a special place
- Explore, meander, places to sit, shade...with fun discoveries along the way
- Views out to the water, views within the space
- Coordinating with the Port, Kitsap Bank, the CEC, Lift Station, and Bay St. Trail



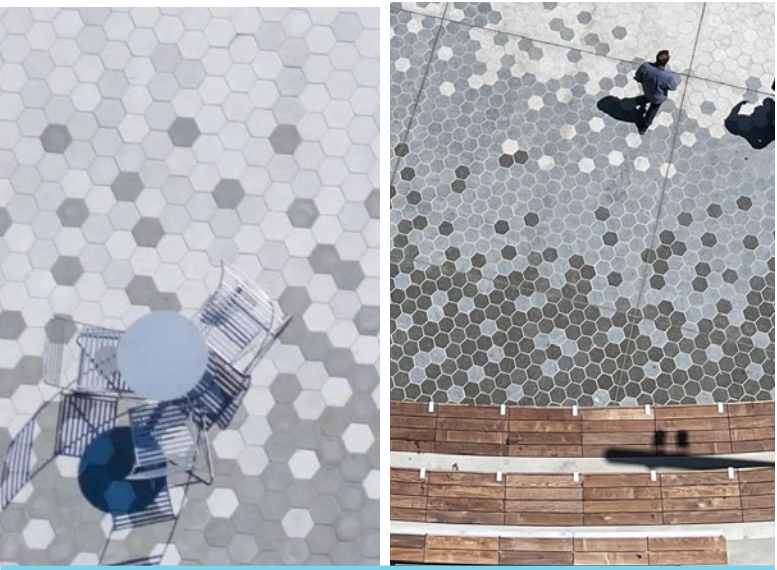
# Orchard Plaza | Pavement Materials



Bay St trail wayfinding markers



decorative concrete that can be driven on



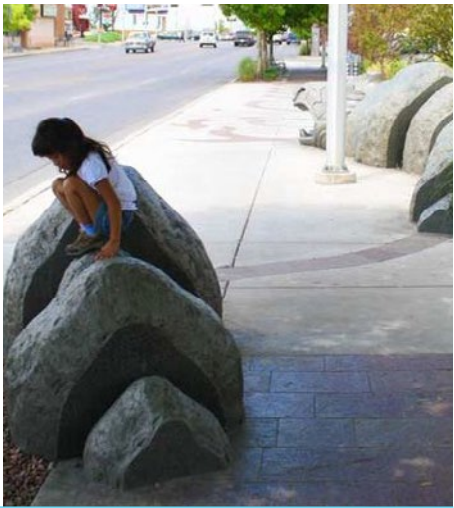
concrete pavers in gathering spaces



# Orchard Plaza | Bioretention + Seating + Discovery



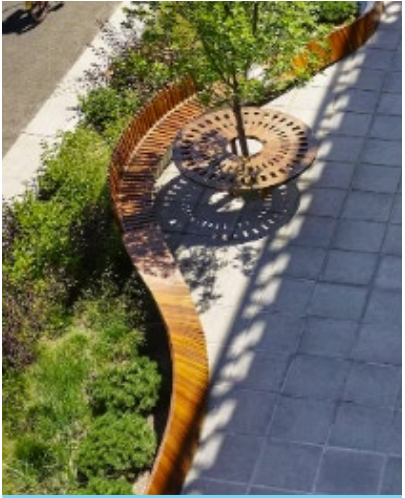
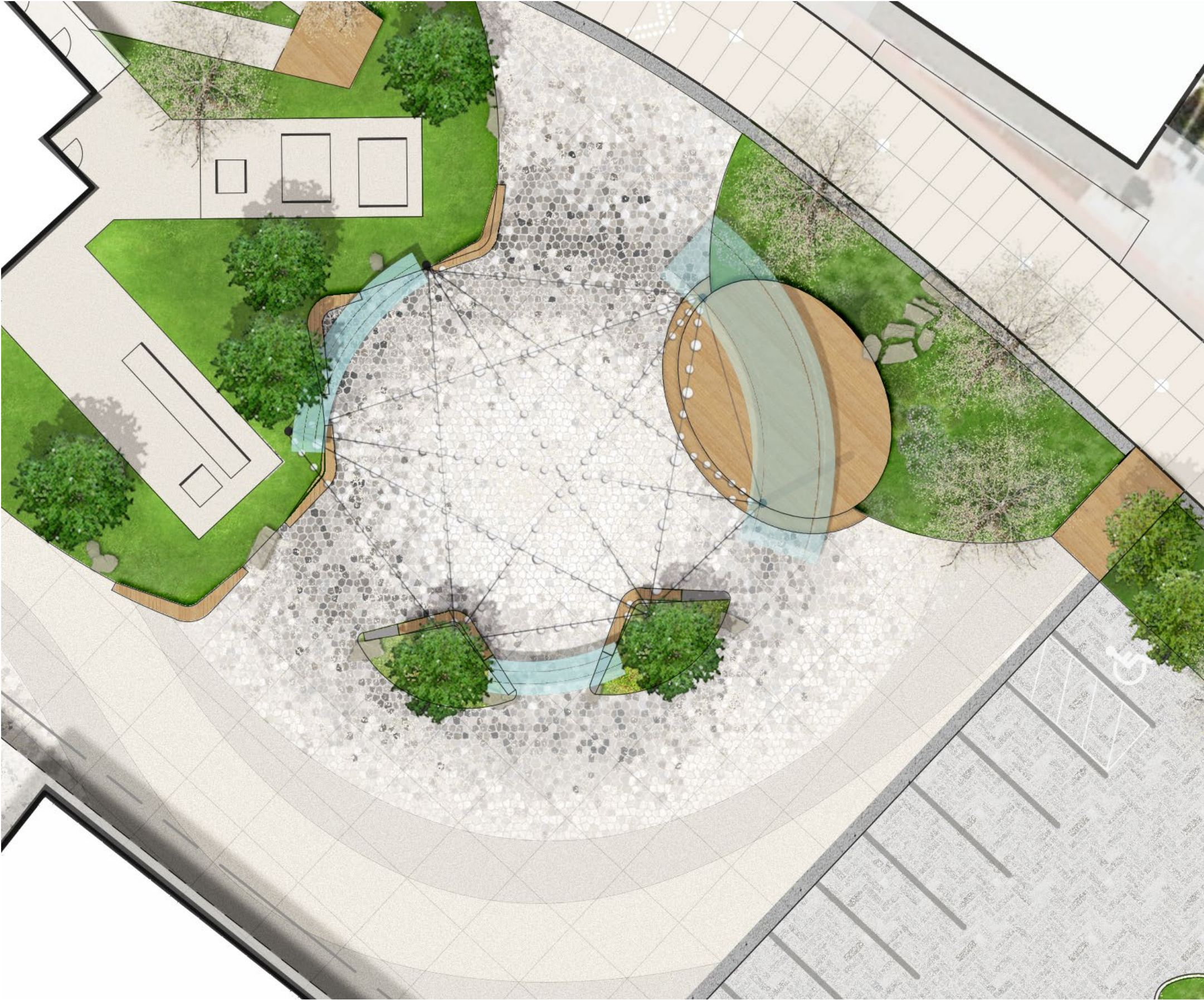
public art sculpture anchoring the entrance of the plaza and CEC



natural materials in the bioretention & seating areas provide a functional zone with an opportunity for learning & discovery



# Orchard Plaza | Seating + Shade + Programming



seating & planters



shade canopy



decorative pavers



festival lighting



multi-use wooden platform



flexible spaces



# Orchard Plaza | Parking lot + Access + Programming



drivable, decorative pavement materials in the parking lot provides an extension of the plaza space for additional programming



bioretention area to help capture stormwater



# Orchard Plaza | Programming - Small Event Layout Example





# Orchard Plaza | Programming - Large Event Layout Example

