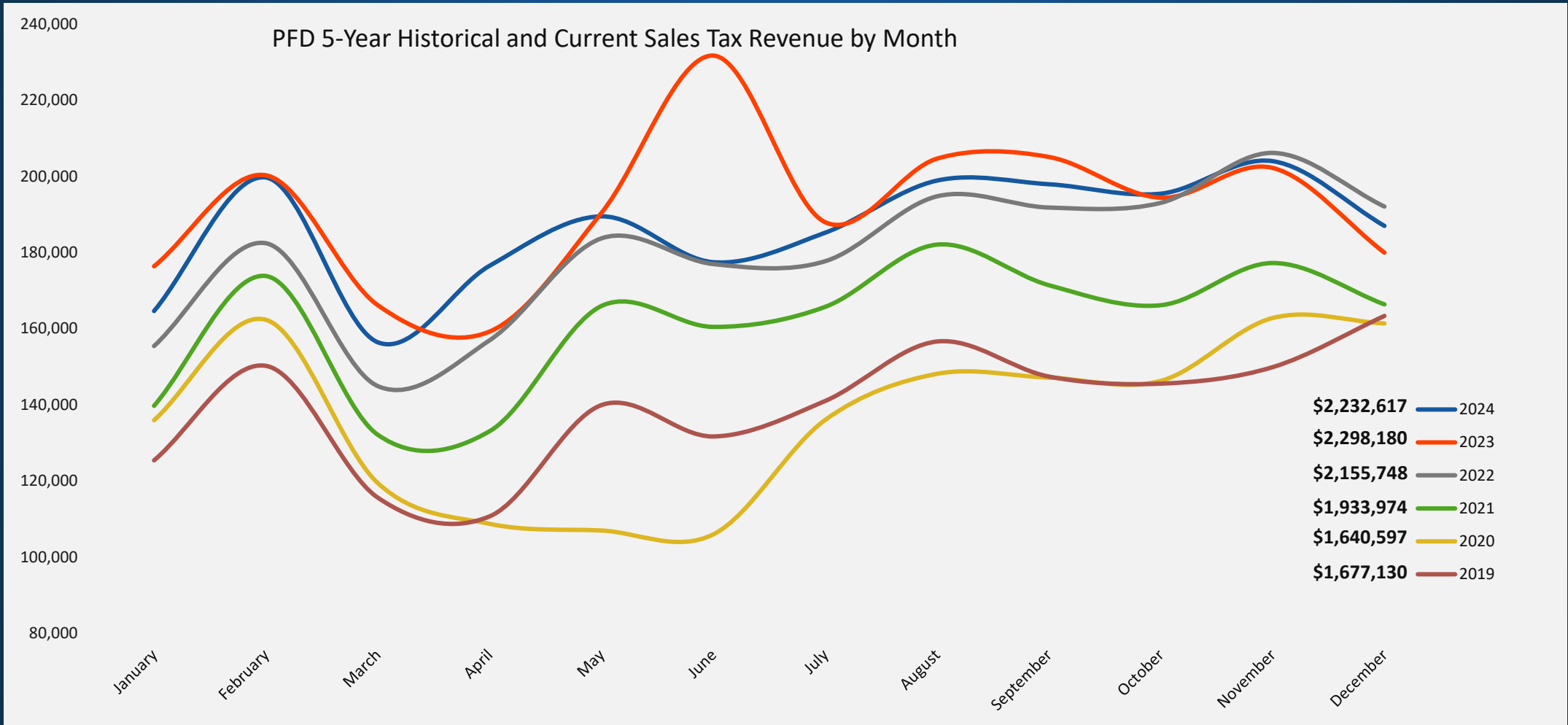


PFD Sales Tax Revenue



PUBLIC FACILITIES DISTRICT

| 2024 | 4th Quarter | | | | | | |
|------------------------------------|------------------|------------------|------------------|------------------|------------------|---------------|-------------|
| | October | November | December | YTD | Budget | Variance | % |
| BEGINNING CASH (ACTUAL) | 2,208,109 | 2,228,057 | 2,253,578 | 2,174,826 | | | |
| REVENUES | | | | | | | |
| Sales Tax | 195,449 | 203,996 | 186,986 | 2,232,617 | 2,375,000 | 142,383 | 94% |
| Interest | 11,745 | 8,596 | 2,808 | 80,205 | 26,736 | (53,469) | 300% |
| Parking Rents | 807 | 1,104 | 923 | 10,277 | 11,400 | 1,123 | 90% |
| TOTAL REVENUES | 208,001 | 213,697 | 190,718 | 2,323,099 | 2,413,136 | 90,037 | 96% |
| EXPENSES | | | | | | | |
| Legal | - | - | - | - | 4,970 | 4,970 | 0% |
| Advertising & Promotions | - | - | - | - | 5,000 | 5,000 | 0% |
| Purchasing Services | - | - | - | - | 1,000 | 1,000 | |
| Other Professional Services | 2,833 | 2,833 | 2,833 | 33,991 | 33,991 | (0) | |
| Postage | - | - | - | - | 15 | 15 | 0% |
| Insurance | - | 750 | 14,455 | 15,205 | 6,246 | (8,959) | 243% |
| Other Intergovernmental Svcs | 1,739 | 1,113 | 2,852 | 5,703 | 79,251 | 73,548 | 7% |
| Total Admininstrative Costs | 4,571 | 4,695 | 20,139 | 54,899 | 130,473 | 75,574 | 42% |
| Debt Service 2012 Bond | 70,110 | 70,110 | 70,110 | 841,548 | 841,988 | 440 | 100% |
| COB Fund 702 Loan Repayment | 13,350 | 13,350 | 13,350 | 160,203 | 160,203 | - | 100% |
| Debt Service 2016 Bond | 100,021 | 100,021 | 100,021 | 1,200,600 | 1,200,800 | 200 | 100% |
| Total Debt Payments | 183,481 | 183,481 | 183,481 | 2,202,351 | 2,202,991 | 640 | 100% |
| TOTAL EXPENSES | 188,053 | 188,177 | 203,620 | 2,257,250 | 2,333,464 | 76,214 | 97% |
| | 19,948 | 25,520 | (12,903) | 65,849 | 79,673 | 13,824 | |
| ENDING CASH (BUDGETED) | 2,228,057 | 2,253,578 | 2,240,675 | 2,240,675 | | | |
| ENDING CASH (ACTUAL) | | | 2,229,349 | | | | |

| | |
|--------------------|---------------|
| 4th Quarter | Total |
| Revenue | 612,415 |
| Expenses | 579,850 |
| | <u>32,566</u> |

MEMORANDUM

TO: City of Bellingham, Washington

FROM: Pacifica Law Group LLP

DATE: October 11, 2024

SUBJECT: Bellingham-Whatcom Public Facilities District

This memo responds to questions from the City of Bellingham (the “City”) regarding the Bellingham-Whatcom Public Facilities District (the “District”). We look forward to discussing these responses with you.

- ***Provide a Brief History of the Public Facilities District***

The PFD was established as a separate municipal corporation under chapter 35.57 RCW, as amended, pursuant to Interlocal Agreement (2002-0335) entered into between the City and Whatcom County (the “County”) on July 22, 2002. A revised and restated interlocal agreement was entered into by and among the City, the cities of Blaine, Everson, Ferndale, Lynden, Nooksack and Sumas, and the County, expressly including the such cities as parties to Interlocal Agreement 2002-0335 (as amended and restated, the “2002 Interlocal Agreement”).

The PFD is authorized by chapter 35.57 RCW to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more “regional centers” as defined by State law. See below for the current definition of “regional center.”

The PFD and the City have entered into various agreements since its formation for the PFD’s operations and financing. The following is a summary of certain of these former, and current, agreements:

- The City and the PFD entered into Interlocal Operating Agreement (2003-0183) dated May 27, 2003, as amended (the “2003 Interlocal Agreement”) under which the City agreed to provide meeting space, clerical services, administration services, and financial services to provide for the custody, investment, and accounting of all funds of the PFD, and to assist in the administration of the financial affairs of the PFD.

- On December 20, 2007, pursuant to Resolution No. 2007-04 adopted by the PFD Board of Directors on December 10, 2007, the PFD issued its Limited Sales Tax Obligation Bonds, 2007 (the “PFD 2007 Bonds”). The principal of and interest on the PFD 2007 Bonds were payable from (a) revenue from the sales and use tax imposed by the PFD pursuant to RCW 82.14.390 in the amount of 0.033% of the selling price in the case of the sales tax or the value of the article used in the case of the use tax (the “PFD Sales Tax”), (b) any admission and parking taxes imposed by the PFD, and (c) any other sources remitted to the City by the PFD for such purpose (together, the “PFD Revenues”).

Pursuant to the terms of the Contingent Loan and Bridge Loan Agreement dated October 24, 2007, between the City and the PFD (the “Contingent Loan Agreement”), the City agreed, in the event that the PFD was unable to provide timely payments of debt service on the PFD 2007 Bonds, to make loans to the PFD in the amounts necessary to make debt service payments on the PFD 2007 Bonds. The obligation of the City under the Contingent Loan Agreement to make loans to the PFD in the amounts and at the times specified therein is an absolute and unconditional obligation of the City, secured by the full faith, credit and resources of the City.

- In 2012, the City issued its Limited Tax General Obligation Refunding Bonds, 2012 (the “City 2012 Bonds”) and allocated a portion of the proceeds of such bonds to refund and defease City limited tax general obligation bonds issued to finance various facilities located in the PFD’s boundaries.
- In 2016, the City and the PFD determined it would be in the best interest of both entities for the City to issue its Limited Tax General Obligation Refunding Bonds, 2016 (the “City 2016 Bonds”), to provide funds to refund the PFD 2007 Bonds to obtain debt service savings. The City 2016 Bonds are a limited tax general obligation of the City, payable from and secured by regular property taxes of the City, and PFD Revenues collected by the PFD and remitted to the City under the terms of a 2016 Financing Agreement (described below).
- In connection with the issuance of the City 2016 Bonds, the City and the PFD entered into a Financing and Operating Agreement (the “2016 Financing Agreement”). The 2016 Financing Agreement replaced, in its entirety, the Contingent Loan Agreement. The intent of the 2016 Financing Agreement was to memorialize the obligation of the PFD to pay PFD Revenues to the City for the purpose of paying debt service on the City 2012 Bonds, the City 2016 Bonds, and any loans and advances from the City to the PFD to make debt service payments with respect to such bonds, and to pledge PFD Revenues for such purpose.

- To evidence its obligation to repay loans from the PFD to the City under the terms of the 2016 Financing Agreement, the PFD issued a bond (similar to a promissory note) to pledge its PFD Revenues for such repayment purposes.
- The effective agreements between the City and the PFD include the 2003 Interlocal Agreement (as amended by the 2016 Financing Agreement) and the 2016 Financing Agreement. The 2016 City Bond transcript contains copies of the organizational documents of the PFD, the current agreements, the PFD bond delivered to the City, and other relevant documents.

The PFD imposed the PFD Sales Tax at the rate of 0.033% effective September 2002. To qualify for the collection of the tax, the PFD and the projects funded by the PFD must meet certain conditions, all of which had been met by the PFD.

Under prior law, the PFD Sales Tax is scheduled to expire at the earlier of when all bonds issued to finance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than 25 years after the tax is first collected. The PFD Sales Tax is therefore scheduled to expire in September 2027 (with the last payments received in November 2027).

Pursuant to recent amendments to State law, the time period for the PFD Sales Tax has been extended from 25 years to 40 years and the PFD Sales Tax may explicitly be used to pay debt service on refunding bonds. In its current form, RCW 82.14.390(4) and (5) provides:

“(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section expires when bonds issued to finance or refinance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than forty years after the tax is first collected.

(5) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section; however, amounts generated from nonvoter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW do not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.”

- ***What is the definition of the City's regional center? The City has maps that suggest it is a geographic area. Is it defined assets or any potential thing within the area?***

The boundaries of the PFD (a geographical area) are distinct from "regional centers" that the PFD is permitted by law to operate and finance.

As described in the 2002 Interlocal Agreement, the boundaries of the PFD are coterminous with the County's boundaries, and include the incorporated areas of the City and the other cities that are a party to the 2002 Interlocal Agreement. This is the area that the PFD imposes and collects its PFD Sales Tax.

The PFD's "regional centers" are the assets eligible to be operated, owned and financed by the PFD, and have historically included the following facilities: (a) the Mount Baker Theatre, (b) streetscapes, (c) the Whatcom Museum, including the Lightcatcher Museum, (d) a performing arts center, and (e) related parking facilities (together, the "PFD Facilities").

The definition of "regional center" has been revised since the formation of the PFD. Under current law, the PFD is authorized by chapter 35.57 RCW as follows:

"acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more "regional centers." For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after July 25, 1999, where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A "special events center" is a facility, available to the public, used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances."

See RCW 35.57.020(1)(a). Note that there is new, limited authority for certain jurisdictions to create a separate/second public facilities district and to finance additional projects, such as community pools.

- ***Can the PFD redefine the regional center? If the PFD sought to do that, what entities (other government agencies) would need to be involved with this effort? What would they need to do?***

"Regional center" is limited by statute to the facilities listed above. The PFD's authority is also limited in its organizational documents (its Charter and the 2002 Interlocal Agreement). If the proposed project expands the scope of the current organizational documents, the parties to the 2002 Interlocal Agreement would potentially need to take action to amend the agreement.

- ***If the PFD wants to undertake a new project, what would need to be done?***

In addition to obtaining any organizational approval described above, before the PFD may issue new debt (or new City debt on behalf of the PFD), or enter into a long-term lease, purchase or development of a new PFD facility, the State Department of Commerce must conduct an independent financial feasibility review. For more information, see

<https://www.commerce.wa.gov/about-us/research-services/public-facilities-district-financial-feasibility-review/>

- ***What are the constraints on what PFD revenues can be used for?***

PFD Revenues may only be used to develop, improve, construct and otherwise operate “regional centers” defined by statute, and summarized above.

- ***Can PFD funds be used for operational expense? If yes, what are the constraints?***

Yes, however, in order to continue receiving the PFD Sales Tax, such PFD Sales Tax must continue to be *pledged* to the repayment of debt. Any PFD Sales Tax revenue not needed for debt service may be used for other lawful purposes, including operations.

- ***If our regional center is a geographical area, can PFD funds be spent on other facilities in that area? OR is constrained to the facilities the PFD already owns?***

The PFD is authorized to operate and finance “one or more” regional centers. It is not limited to facilities the PFD already owns. Funds, however, must be used for regional centers and related parking, and cannot be used for unrelated non-regional center purposes even within the jurisdictional boundaries of the PFD.

- ***Could funds be used on repairs of the existing PFD facilities? Other facilities within the regional center? If it cannot be used for repairs, what is there a lowest threshold for capital improvements that qualify?***

Yes. “Repair” is explicitly listed in the PFD’s authority in RCW 35.57.020(1)(a).

- ***Does the PFD need to own facilities for the PFD to spend money on them (i.e., the PFD owns Lightcatcher Museum & Mount Baker Theatre, but not other Museum facilities)?***

No, but there must be a contractual arrangement that provides for the ownership, use and funding of the facilities between the PFD and the City.

- ***Is there an ongoing match requirement? Assuming the match original match has already been met.***

As noted above, the local match requirement corresponds to the amount of PFD Sales Tax revenue *collected*. RCW 82.14.390(5) provides “Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section”.

The City will need to determine what has been contributed to satisfy the local matching requirement, and whether additional matching funds are necessary due to any increase of or extension to the PFD Sales Tax.

- ***What technically needs to be accomplished to extend the scope of the PFD Revenues?***

In order to continue the PFD Sales Tax past the initial 25 year termination date and take advantage of an additional 15 years (for a total of 40 years), the PDF needs to pledge its PFD Sales Taxes to debt that extends for such period *prior to the date that the initial 25 years concludes*. This could be done via a refinancing of existing debt or issuing new debt. Either a refunding or a new money issue will require action by the City and the PFD, and if a new project is financed, a feasibility report will need to be obtained by the State Department of Commerce.

It is also important that the refunding or new money bonds are issued before the original expiration date of the sales and use tax credit (2027). There is no new authority to impose an additional sales and use tax (and corresponding State sales tax credit) if the original sales and use tax expires before the term is extended.