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Carl J. Florea - *Mayor*
Carolyn Wilson
Mia Bretz
Sharon Waters
Clint Strand
Jason Lundgren
Anne Hessburg – *Mayor Pro Tem*
Zeke Reister
Ana Cortez-Steiner - *City Administrator*

Join Zoom Meeting

<https://us02web.zoom.us/j/81754676730?pwd=dXlxdDJ2TzBhMjFRTRJbmJ2NF12Zz09>

Meeting ID: 817 5467 6730

Password: 683470

Dial by your location

+1 253 215 8782 US

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2020 Strategic Dialogue

Date: Friday, July 31, 2020

7:00 AM – 3:00 PM

AGENDA

7:00 – 7:15	Mayor: Welcome +	<i>Homework</i>
	Mayor Pro tem: Purpose + Desired Outcomes	
7:15 – 9:45	Council Priorities	<i>Be ready to discuss your political and policy agenda</i>
	Policy Discussion: Mayor and Council	
	Desired Outcome: council members and mayor describe policy priorities	
9:45 – 10:00	BREAK: stretch + blink + turn off video	<i>Review Binder</i>
10:00 – 11:45	Mayor-Council form of Government 101	Attorney Emily Guildner will address topics.
	<ul style="list-style-type: none">• Open Public Meetings Act / Social Media Policy• Quasi-Judicial Role: Planning Commission + Municipal Code• Mayor as Chief Executive• Council as Chief Legislator• Mayor pro tempore• City Administrator	<i>Question & Answer period to follow</i>

11:45 – 12:15

BREAK

12:15 – 1:45

Taxes, fees and Rates: How do we Spend +

Finance Director

How can it be Spent?

COVID Impact

1:45 – 3:00

**General Fund Expenses + Hotel Tax Expenses
+ Enterprise Funds**

Finance Director

Adjourn

MAYOR- COUNCIL FORM OF GOVERNMENT 101

Open Public Meetings Act

Social Media Policy

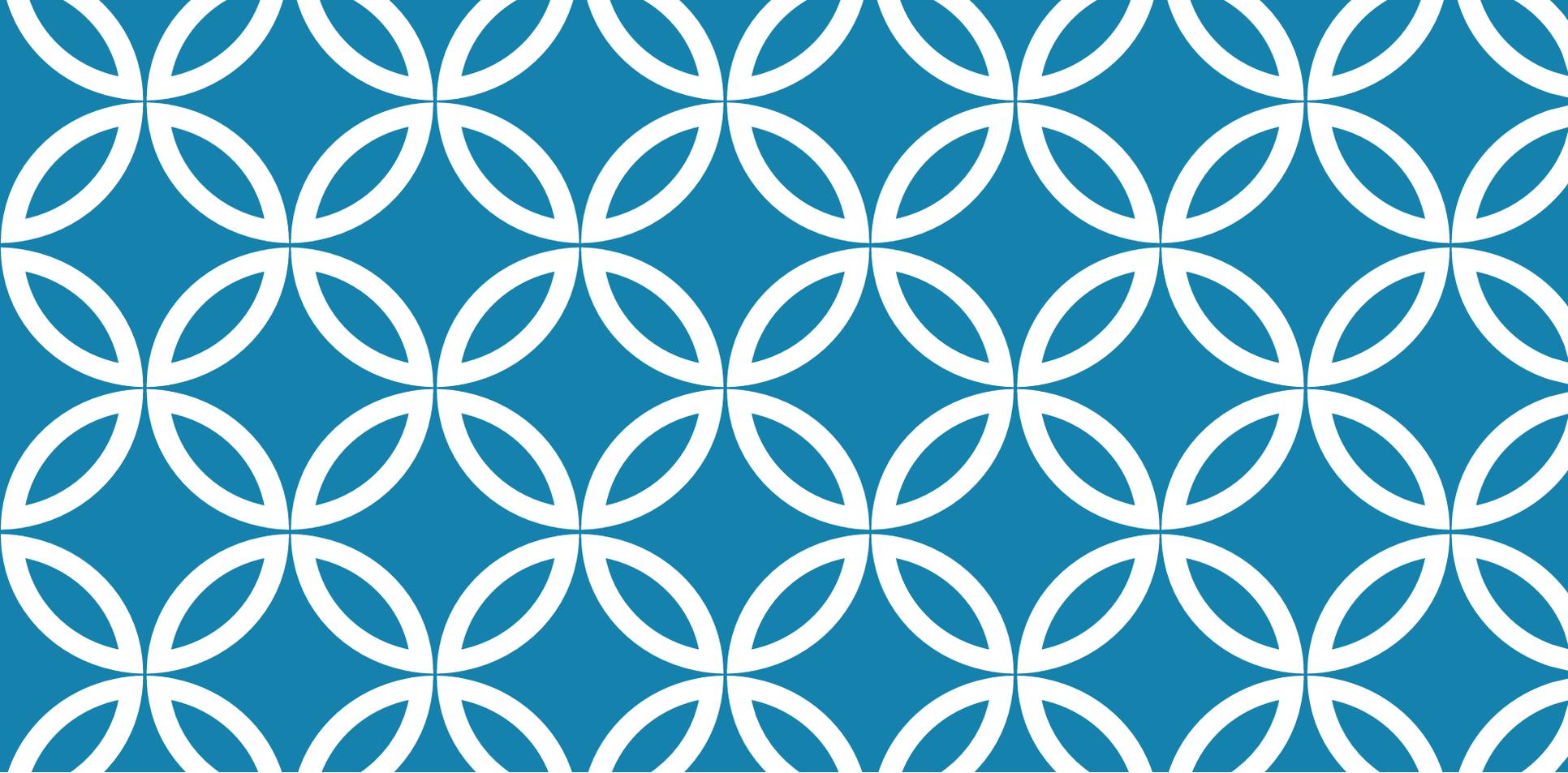
Mayor as Chief Executive

Mayor pro tempore

City Administrator

Council as Chief Legislator

Quasi-Judicial Role: Planning Commission +
Municipal Code



OPEN PUBLIC MEETINGS ACT



PURPOSE OF OPEN MEETINGS

RCW 42.30.010



Open government

Citizen control

LEGAL BASIS FOR OPEN MEETINGS

“All meetings of the governing board of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.” RCW 42.30.030

BASIC REQUIREMENTS FOR MEETINGS

Regular meetings

Special meetings

Adjourned meetings

- By committee
- By clerk



WHAT CONSTITUTES A MEETING?

Commissions, City Councils, Planning Commissions:

Quorum and “Action”

“Action” = all transacting of a governing body’s business, including receipt of public testimony, deliberations, discussions, considerations, reviews, and evaluations, as well as “final” action.



Subcommittees:

Hold hearings

Receive public comment or make decisions

Meetings by Electronic Media or Teleconference

WHO HOLDS OPEN MEETINGS?

Must:

- City Council
- Planning Commission
- Civil Service Commission
- Board of Adjustment
- Salary Commissions

It Depends:

- Library Boards
- Park Boards
- Council Committees



EXECUTIVE SESSION RCW 42.30.110



Personnel
Litigation
Real Estate

EXPULSION OF PARTICIPANTS

Options:

- Recess
- Adjourn
- Removal
- Adjourn to a new location



PENALTIES FOR VIOLATION



- **Committee members:**
\$500 fine for first knowing violation,
\$1000 violation for a subsequent one
- **City:**
Attorney fees
Actions are null and void

SOCIAL MEDIA

BEST PRACTICE GUIDELINES AND THINGS TO THINK ABOUT

OPMA

PRA

Campaigning

Use of public facilities

Emojis

ELECTED OFFICIALS

Types of speech on Social Media

- Private citizen → retains first amendment rights
- Public official → does not have full first amendment rights, speaking from public official stand point (Kennedy v. Bremerton School District, 9th CIR, 2017)

SOCIAL MEDIA SPECTRUM

Private page → Family Vacation

Spectrum of Gray → Campaign positions, activities as a city council person, engagement with constituents

Council page “official page” → My position on X is Y.





FORUM

Types of Forums

- Traditional or “open public forum” – Sidewalk/ park
- Limited – City Council Meetings
- Closed – City Hall lobby

BEST PRACTICE CONSIDERATIONS

Public Records Act

- Identifying the records. Retention. Disclaimers. OPMA/Appearance of Fairness
- Avoid Friending other elected, Consider pre-approved posts, quasi-judicial

First Amendment

- Open public forum vs. limited public forum, non-discrimination, equal access

PUBLIC RECORDS ACT (PRA)

BEST PRACTICE GUIDELINES

Public Content

- Whether posted by you or a visitor; subscriber/follower information lists are also public

Disclaimer

- Have a disclaimer on profile/page etc.
- Retention/Archiving
 - Contact Chantell Steiner for assistance

Deleted Comments

- Date, content of the post, poster, reason for deletion in accordance with guidelines

OPEN PUBLIC MEETINGS ACT/APPEARANCE OF FAIRNESS

BEST PRACTICE GUIDELINES

Quorum

- Just say No: Friending/liking/following etc., Beware of threads – OPMA penalties could extend to Social Media Use (voiding action etc.)

Pre-approved posts

FIRST AMENDMENT

BEST PRACTICE GUIDELINES

Open Public Forum

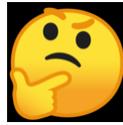
- Allows for broad protections of commentators, Designation of limited Public Forums

Create the page as a limited forum, follow the policy best practice to avoid opening it up. Allows for limiting comments to on-topic

Non-discrimination

Equal Access

😊? OR 😞?



Emojis can have a multitude of meanings depending on their context.

What's the risk when the emoji sent is different to the one received?

When an emoji disappears from a message (changing its meaning) because the recipient's platform doesn't recognize it?

Little to No cases – a language all its own subject to interpretation.
0_0

http://cdn.emogi.com/docs/reports/2016_emoji_report.pdf

TAKE AWAY

A MENTAL CHECKLIST

Personal and Official page are separate

- ▶ Does this pertain to my life as a citizen in Leavenworth = Personal; Does this involve my elected responsibilities = official

Follow Moderation recommendations

Remember Public Records and OPMA issues apply as if this were email

Contact staff with specific issues or scenarios if you need more clarity

EMAIL REMINDER

Serial Meetings

- $A \rightarrow B \rightarrow C \rightarrow D = \text{Meeting}$
- $A \rightarrow B \rightarrow A \rightarrow C \rightarrow D \rightarrow A = \text{meeting}$
- “Reply All” – Avoid or disable

Personal Devices

- If public records, subject to search and affidavit attesting to compliance.

MAYOR, COUNCIL, MAYOR PRO TEMPORE, AND CITY ADMINISTRATOR

Division of responsibilities and Statutory authority

Characteristics	Mayor-Council
Legislative authority	Council
Executive authority	Elected mayor
Selection of CEO	Popularly elected
Removal of CEO	Recall election
Tenure of executive	4-year term
Tenure of council	4-year term
Appointment of department heads	Mayor (with council confirmation if provided)
Removal of department heads	Mayor
Veto	Mayor
Policy development	Mayor can propose
Policy implementation	Mayor
Underlying principles	Separation of powers Political leadership Strong central executive

MAYOR

Chief Executive

- Policy and administration are separate. All legislative and policymaking powers are vested in the city council.

Administrative authority is vested in the mayor.

Mayors may veto ordinances but the mayor's veto can be overruled by two-thirds vote of the council.

MAYOR PRO TEMPORE

RCW 35A.12.065

Pro tempore appointments.

Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability.



CITY ADMINISTRATOR

Many mayor-council cities have hired professional city administrators (sometimes also called chief administrative officers or CAOs) to serve under the mayor and assist with administrative and policy-related duties.

Benefits of professional management, allowing the mayor to focus greater attention on policy development, political leadership roles, or their own livelihood.

A pivotal but yet unofficial role of the administrator is to serve as a link between the mayor and the council.

LEGISLATIVE VS. QUASI-JUDICIAL

“To Legislate”

“To Enact Laws”



“To Adjudicate”

“To determine the rights of a party”



LEGISLATIVE EXAMPLES

Comprehensive Plan & Comprehensive Plan Amendments.

Area Wide Zoning and Area Wide Rezones

Enact New Critical Areas Ordinance

Enact a New Sign Code

Enact Design Standards

Form a LID



LEGISLATIVE

Legislative Bodies

City councilmembers are legislators. Together they constitute a legislative body which is given authority by the state constitution and state law to make local law. Local legislative authority is generally limited to what the state specifically grants to cities. However, code cities have "home rule" powers which permit them to exercise authority not specifically granted; provided that the state has not specifically prohibited that local authority.



A legislative body must act “**Legislatively**”

to enact laws and plans to follow –

before they can act in a **Quasi-judicial** role to rule whether a specific application/assessment complies

with those laws and plans.



QUASI-JUDICIAL EXAMPLES

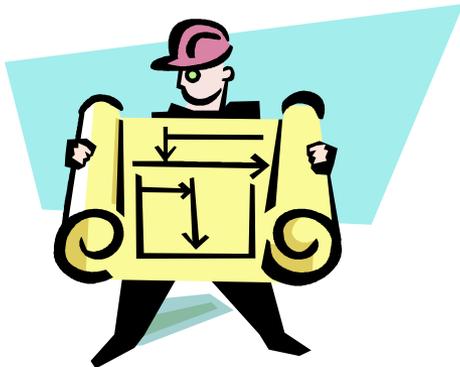
To grant approval for a Subdivision or Plat.

To grant approval for a Site Specific Rezone.

To grant approval on a Conditional or Special Use Permit.

To grant approval on a Binding Site Plan.

To confirm a final LID assessment



SUBSTANTIVE STANDARDS LEGISLATIVE VS. QUASI-JUDICIAL

Consistency with GMA ,
other applicable State
Law and Comprehensive
Plan

Rational Basis

Submitted record contains
Substantial Evidence &
Compliance with criteria of
laws and code.

PROCESS LEGISLATIVE

Appearance of Fairness Doctrine does not apply.

- Conflict of interest ALWAYS applies

Public Participation Process

Open House, Workshops, Public Meetings including GMA processes.

PROCESS QUASI-JUDICIAL



Appearance of Fairness Doctrine applies,
No Conflicts, No Ex-parte Communications, No
Non-record Information, Full Disclosure.

(Personal interest, Prejudgment of issues, and partiality)

Due Process Public Hearings

- a. On the Record
- b. Burden of Proof
- c. Witnesses Sworn in (Possible Cross examination)
- d. Written Decision on the Record



APPEARANCE OF FAIRNESS

Examples when this was violated:

- Financial Gain, Property Ownership, Employment by Interested Person, Prospective Employment by Interested Person, Associational or Membership Ties, Family or Social Relationships
- Although public officials are not prohibited from expressing opinions about general policy, it is inappropriate for decision-makers to be close-minded before they even hear testimony on a contested matter. Decision-makers need to reserve judgment until after all the evidence has been presented.
 - Anderson v. Island County, the state supreme court overturned a decision because a councilmember had prejudged a particular issue. He had made an unalterable decision before the hearing was held, evidenced by telling the applicant during the hearing that he was “just wasting his time” talking.

APPEARANCE OF FAIRNESS CONT.

Hayden v. Pt. Townsend, 28 Wn. App. 192 (1981), the planning commission chairperson, who advocated a particular rezone for his business, relinquished his position as chair of the hearing, and did not vote or otherwise participate in his official capacity. Nevertheless, an appearance of fairness violation occurred because the planning commission chairperson acted as an advocate of the rezone by joining the hearing audience, acting as an agent of the rezone applicant, questioning witnesses, and advising the acting chairman on procedural matters.

Buell v. Bremerton, an appearance of fairness violation occurred because a planning commission member continued to participate even though the rezone would have been approved without his vote, and the planning commission approval was merely a recommendation to council. In reviewing the continuing participation of the disqualified member, the court found that the “bias of one member infects the actions of other members.” “The importance of the appearance of fairness has resulted in the recognition that it is necessary only to show an interest that might have influenced a member of the commission and not that it actually so affected him.”¹

DECISION LEGISLATIVE VS. QUASI-JUDICIAL

Enactment of Ordinance



Written Decision
consisting of:

Findings of Fact and
Conclusions of Law
usually in form of
Resolution or Ordinance
for the specific
application.

An Ordinance to confirm
LID Assessments.

APPEAL LEGISLATIVE VS. QUASI-JUDICIAL

60 day window

Petition for Review to the
Growth Management
Hearings Board.

21 Day Land Use Petition
Act (LUPA) appeal to
Superior Court if land use.

LID 10 days after
Ordinance effective

DESIGN REVIEW LEGISLATIVE VS. QUASI-JUDICIAL

Adoption of Design Standards.

- Compliance with GMA process?
- If 1st Amendment Rights affected – then “Compelling Interest” required.
- “Void For Vagueness”

Application of Design Standards.

- Appearance of Fairness applies.
- All other Quasi-judicial procedures and due process apply.

PROBLEM AREAS IN QUASI-JUDICIAL DESIGN REVIEW

Process

- Regulatory Reform permits only one (1) open record hearing, and only one (1) closed record hearing.

Substance

- Standards must give “effective or meaningful guidance” to applicants.
- Nebulous standards such as “harmony,” “interesting,” and “not monotonous” are not enforceable. *Anderson v. Issaquah*.
- Decision Maker must be able to articulate a standard and a reason for requiring a design change and may not rely on “feelings” or personal images of what is “Good” or “Bad.”
- An application that complies with the standards must be approved.

HOW TO REDUCE APPEALS IN LEGISLATIVE MATTERS

Review the record with the City Attorney.

Have City Attorney review and
approve any final ordinance

If there is a Threat of PFR/GMHB,

Consult with the City Attorney!

Update Codes to insure they establish clear and
consistent processing mechanisms.



PLANNING COMMISSION

PLANNING COMMISSIONS ARE REQUIRED BY STATE LAW AND CARRY SPECIFIC STATUTORY DUTIES:

RCW [35.63.060](#)

Powers of commissions.

The commission may act as the research and fact-finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by its council or board, or by the state with the approval of its council or board. The commission, upon such request or authority may also:

- (1) Make inquiries, investigations, and surveys concerning the resources of the county, including but not limited to the potential for solar energy development and alternative means to encourage and protect access to direct sunlight for solar energy systems;
- (2) Assemble and analyze the data thus obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;
- (3) Make recommendations from time to time as to the best methods of such conservation, utilization, and development;
- (4) Cooperate with other commissions and with other public agencies of the municipality, state and United States in such planning, conservation, and development; and
- (5) In particular cooperate with and aid the state within its territorial limits in the preparation of the state master plan provided for in RCW [43.21A.350](#) and in advance planning of public works programs.

In carrying out its powers and duties, the commission should demonstrate how land use planning is integrated with transportation planning.

OTHER COMMISSIONS

Statutorily required commissions and when applicable can be found here: <http://mrsc.org/getmedia/76A35D59-DAD3-483A-B335-ABA1A1EC2979/boards-1.aspx>

Most other boards and commissions are advisory in nature.

POINTS TO REMEMBER

In a quasi-judicial proceeding decisions must be made on the record. Decision makers cannot rely on personal knowledge or expertise.

In a quasi-judicial proceeding, the Appearance of Fairness Doctrine remain in effect until all avenues of appeal are exhausted.



QUESTIONS?

Answer: It depends 😊

RESOLUTION 06-2019

**A RESOLUTION OF THE CITY OF LEAVENWORTH ADOPTING
SOCIAL MEDIA POLICY AND BEST PRACTICE GUIDELINES**

WHEREAS, Social Media sites are being used by a growing number of people as a way to send and receive information; and

WHEREAS, the public seeks information about the community through Social Media sites and Social Media provides an effective and efficient means to communicate with the public; and

WHEREAS, the City Council recognizes that the Courts continually update and evaluate laws related to Social Media and as a result of the emerging nature of this means of communication City Staff, elected officials, and site visitors should have guidelines to help navigate Social Media sites; and

WHEREAS, it is in the best interest of the community to have procedures and guidelines for all users and visitors of City-linked Social Media to communicate efficiently and effectively online.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEAVENWORTH AS FOLLOWS:

Section 1. The City adopts Attachment A as the policy and procedure for City Staff use and monitoring of the City Social Media sites.

Section 2. The City adopts Attachment B as Best Practice Guidelines for Elected Officials and Volunteer Board members when engaging in City Business.

Section 3. The City adopts Attachment C as the terms and conditions for visitors to City Social Media. This document shall be posted on the City website and all City Social Media Accounts.

PASSED by the City Council and **APPROVED** by the Mayor this 14th day of May, 2019.

CITY OF LEAVENWORTH

By: 

Cheryl K. Farivar
Mayor

Attest:


Chantell Steiner
Finance Director/City Clerk

ATTACHMENT A

City of Leavenworth Social Media Policy & Guidelines for City Staff

I. APPLICABILITY

This Policy is intended for City staff use in the managing and monitoring of City Social Media. This policy is intended to supplement existing Social Media guidelines in the Personnel Policies. The Personnel Policies are designed to discuss specific employee participation and department set up of Social Media sites. Any ambiguity or conflict between the two policies relating to set up or employee participation shall be governed by the Personnel Policy; any ambiguity or conflict relating to managing specific posts or content on a site shall be governed by this policy.

II. PURPOSE

- 1) To establish basic guidelines, standards and instructions for the City to use Social Media for the purpose of sharing time-sensitive and emergency information; enhancing customer service; providing information about City programs, services, projects, issues, events, and activities; and marketing City goals and missions within an overall communications strategy.
- 2) To establish guidelines for City Social Media sites in order to ensure consistency, accuracy, value to citizens, and compliance with State and Federal laws.
- 3) To prohibit inappropriate use.

III. DEFINITIONS

“Appointed Volunteer” – is any person appointed by the Mayor or Council to perform a function on a board or commission that discusses and provides guidance on City business and issues.

“Comment” – A response to a City post or Social Media content submitted by a commenter.

“Commenter” – A member of the public who submits a comment for posting in response to the content of a particular City post or Social Media content.

“Elected Officials” includes Mayor, Councilmembers, and any staff working on an Elected Official’s behalf to represent him or her, using a Social Media tool.

“Like” is a feature that allows users to show their support for a specific comment, pictures, wall posts, statuses, or fan pages. The “Like” button allows users to show their appreciation for content without having to make a written comment.

“Post” – An article or short statement or other content posted to a City Social Media site by a City site manager or site contributor.

“Social Media” – the use of third-party hosted online technologies that facilitate social interaction and dialogue, which provides alternative ways for the City of Leavenworth to share information with a broader audience. Social Media includes social networking sites like Facebook, micro-blogging tools such as Twitter, and audio-visual networking sites such as YouTube.

“Site manager” – a designated City contact who is responsible for posting information and monitoring comments on that site.

“Site Contributor” – a designated City contact who posts information and monitors comments under the direction of a site manager.

“Subscriber” – a member of the public who subscribes to a Social Media site to receive regular updates.

“Tagging” - a mechanism of linking a person, page, or place to a post.

“Visitor” - a person who views an Elected Official’s Social Media site.

IV. PROCEDURE

A. City-Posted Information

- 1) The most appropriate uses of City Social Media sites are:
 - a) For time sensitive and emergency information;
 - b) As a communications/promotional marketing tool, which increases the City’s ability to broadcast its message to the widest possible audience enhancing customer service;
 - c) To share news and posts of partner agencies and community organization;
 - d) To promote community awareness, discussion, and understanding of City government and local issues.
- 2) Site managers must maintain accurate City information on Social Media sites by reviewing and updating it as necessary and appropriate. Social Media sites will be reviewed at least once daily during regular business hours.
- 3) Wherever possible, a link to the City’s website should be included in Social Media posts, directing users back to the City of Leavenworth website for in-depth information on the posted content.
- 4) Elected officials and Appointed Volunteers shall not comment or otherwise communicate on the City’s Social Media sites. Participating in online discussions may constitute a meeting under the Open Public Meetings Act, RCW 42.30. The Site manager may post secondary copies of materials developed by elected officials if the original content has been published through other City communication channels.

B. Information Posted by Outside Individuals

- 1) For all City Social Media sites that allow posts, those sites are limited public forums, moderated by City of Leavenworth staff to ensure content posted by outside users is appropriate.
- 2) Prohibited content is described in section D below.
- 3) Prohibited content must be removed as soon as practicable and retained as required under the Public Records Act and described in section C below by the Site Manager

C. Retention of Posted Information

- 1) Information posted on the city's Social Media sites is subject to the Public Records Act and associated retention schedule. Original content posted on Social Media sites must be retained for three years from the date of posting.
- 2) Site managers are responsible for ensuring retention through the City's Social Media Archiving systems. This includes periodic review of the Archive to ensure content has been appropriately retained.
- 3) Subscriber information and comments posted by outside users on City Social Media sites, including those that are prohibited and removed by staff, must be retained. Content removal is outlined in Section E.

D. Prohibited Contents

The City site is a Limited Public Forum. To ensure Prohibited Content is not displayed on City Social Media, all visitor posts must be approved by a site manager or contributor. All moderation of posts and comments, including removal of content is subject to Section E.

The following is prohibited on the City of Leavenworth Social Media sites:

- 1) Comments that violate the Social Media's terms of use;
- 2) Posts and comments that promote or advertise commercial services, entities or products except as stipulated in City marketing plans or determined by the City to be essential to economic development;
- 3) Political statements, including comments that endorse or oppose political candidates or ballot propositions, are prohibited under state law (RCW 42.52.180);
- 4) Religious statements, including comments that endorse or oppose any type of religion, religious opinions or activities;
- 5) Posts and comments that include vulgar, threatening or harassing language;
- 6) Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color,

age, religion, gender, marital status, socioeconomic status, national origin, physical or mental disability, sexual orientation, or other protected status;

- 7) Obscene or sexual content or links to obscene or sexual content;
- 8) Illegal activity or encouragement of illegal activity;
- 9) Information that may tend to compromise the safety or security of the public or public systems;
- 10) Comments from children under 13 cannot be posted in order to comply with the Children’s Online Privacy Protection Act. By posting on the City Social Media site, users acknowledge that they are at least 13 years old. Those 12 years old or younger may e-mail the City instead;
- 11) Content that violates a legal ownership interest of any other party; or
- 12) Anonymous posts.

E. Content Removal

1) Removing Content

If a post or comment on a city post violates this Policy, staff can take immediate action to remove it. This removal procedure also applies to visitor posts that are moderated by staff. Those posts are automatically hidden until approved – and “allowed on Page” should always be granted as quickly as possible unless a post is inappropriate.

**2) Facebook Comment Moderation
Visitor Posts**

The City Facebook page is set to review stand-alone posts made by visitors. Posts made by others will be hidden from the Page by default.

ATTACHMENT B

City of Leavenworth Best Practice Guidelines for Elected Officials and Volunteer Boards

I. APPLICABILITY

This policy applies to any Social Media site or tool used by Elected Officials in their official capacity to communicate with constituents or the general public. It is primarily each Elected Official's responsibility to review Best Practice Guidelines.

This policy does not apply to personal accounts so long as no City Business is discussed.

II. DECLARATION OF POLICY

This policy outlines the roles, responsibilities, and best practice recommendations for the use of Social Media by Elected Officials in their official capacity. The City's Elected Officials are committed to open and progressive communications between themselves and their constituents utilizing available and future online technologies within the limits of the law.

III. GENERAL POLICY

Elected Officials should not use Social Media as a mechanism for conducting official city business other than to informally communicate with the public. Examples of business that should not be conducted through Social Media include: making policy decisions, official public noticing, and discussing confidential City matters that have not been approved for release to the public. Elected Officials' Social Media site(s) should contain links directing users back to the City's official website for in-depth information, forms, documents, or online services necessary to conduct official city business.

IV. ETHICS AND ELECTIONS RULES OF COMPLIANCE

All content posted on individual Elected Officials' Social Media sites should comply with applicable Council Rules of Procedures, City ordinances and administrative rules, and Washington State law regulating public agencies and elected officials.

Elected Officials should not post or release proprietary, confidential, or sensitive information on Elected Official Social Media sites in a manner that violates applicable state law, including, without limitation, RCW 42.23.070 – Prohibited Acts.

IV. PUBLIC RECORDS ACT COMPLIANCE

Content maintained in a Social Media format, i.e., Facebook, YouTube, Twitter, etc., that is related to City business, including communication between an individual Elected Official and constituents or the general public, and a site's listing of "friends" or "followers," may be considered a public record subject to disclosure under the state Public Records Act.

Any Social Media tools used should clearly and prominently state that all content submitted by members of the public is potentially subject to public disclosure pursuant to the Public Records Act, RCW 42.56. If it is not possible to display this notice prominently on the site, Elected Officials should notify users by including a statement on their page, notify new users via response to posts, and/or periodically notify existing users via broadcast message.

Under the state Public Records Act, the City is responsible for responding accurately and completely to any public records request, including requests of public records of Social Media maintained by individual Elected Officials. Therefore, it is mandatory that records have been retained for the legally required retention period in accordance with applicable standards.

Users of, and visitors to, Social Media sites shall be notified that public disclosure requests must be directed to the appropriate City Public Records Officer.

As with any correspondence sent in his or her capacity as an Elected Official, Elected Official postings to Social Media sites maintained by others must be retained by the posting Elected Official to the extent that such content constitutes a "public record" as defined by Chapter 42.56 RCW. Any removal of content for violation of established rules must be retained for public record purposes.

V. OPEN PUBLIC MEETINGS ACT AND APPEARANCE OF FAIRNESS DOCTRINE COMPLIANCE

Communication between four (4) or more Councilmembers via Social Media, as with telephone and email, may potentially constitute a "meeting" under the Open Public Meetings Act, Chapter 42.30 RCW. For this reason, Councilmembers should avoid participating in Social Media discussions/threads regarding City business that involve four (4) or more Councilmembers.

In addition, receiving or making posts or comments regarding quasi-judicial matters via Social Media may violate Council Policy and Chapter 42.36 RCW – the Appearance of Fairness Doctrine. To avoid receiving any comments on pending quasi-judicial matters that may violate the Appearance of Fairness Doctrine, Councilmembers are strongly encouraged to maintain Social Media sites with settings that can restrict users' ability to post content. Questions about whether a matter referenced is quasi-judicial should be referred to the City Attorney.

VI. CONTENT GUIDELINES

For Social Media sites/tools that are owned or maintained by the City of Leavenworth, users and visitors of Social Media sites who submit comments should be clearly notified that the intended purpose of the site is to serve as a mechanism for informal communication between Elected Officials and the public regarding the City-related topics discussed. Any content removed in compliance with the Use Policy must be retained, including the time, date, and identity of the poster when available, to the extent required by law. See above Public Records Retention Act Compliance.

VII. EQUAL ACCESS

Elected Officials are discouraged, in their official capacity, from posting or commenting on Social Media sites that require membership or subscription. When posting information or soliciting feedback on such a site, Elected Officials should always provide an alternate source for the same information or mechanism for feedback on the City's public website, so that those who are not members of the Social Media site may have equal access.

ATTACHMENT C

Social Media Visitor Terms and Conditions to City Social Media

I. APPLICABILITY, PRIVACY POLICY, AND DISCLAIMER

Any individual accessing, browsing and using a City of Leavenworth Social Media site accepts without limitation or qualification, the City's Social Media Policies (hereafter "Policies"). These terms and conditions apply only to the Social Media sites (defined here as third party hosted online technologies that facilitate social interaction and dialogue, such as Facebook, Twitter, and YouTube) that are managed by the City of Leavenworth. The City of Leavenworth maintains the right to modify these Policies without prior notice.

The City of Leavenworth Social Media sites are limited public forums within the law. The City has the right to monitor the content, remove content in violation of this policy, remove or edit City postings, or remove the site without prior notice.

Any modification is effective immediately upon posting the modification on the City Website or Social Media Policy page unless otherwise stated. Continued use of a City of Leavenworth Social Media site following the posting of any modification signifies acceptance of such modification.

All users of a City of Leavenworth Social Media site are also subject to the site's own Privacy Policy. The City of Leavenworth has no control over a Third-Party Site's privacy policy or modifications to their site. The City of Leavenworth also has no control over content, commercial advertisements, or other postings produced by the Social Media site that appear on the City of Leavenworth Social Media site as part of the site's environment.

The City of Leavenworth operates and maintains its Social Media sites as a public service to provide information about City programs, services, projects, issues, events, and activities. The City of Leavenworth assumes no liability for any inaccuracies these Social Media sites may contain and does not guarantee that the Social Media sites will be uninterrupted, permanent, or error-free.

II. POSTS POLICY

Although the City encourages posts and comments on City of Leavenworth Social Media sites that allow posts or comments, it is the express policy of the City of Leavenworth that these sites are limited public forums and are moderated by City staff. All posted content (comments, photos, links, etc.) must be related to the topic at hand.

The City of Leavenworth reserves the right to remove posted content that does not comply with these Policies. All posts and comments uploaded to City of Leavenworth Social Media sites that allow posts will be periodically reviewed. All posts and comments are public records subject to public disclosure under the Public Records Act.

The following are prohibited on City of Leavenworth Social Media sites:

- 1) Comments that violate the Social Media's terms of use;
- 2) Posts and comments that promote or advertise commercial services, entities or products except as stipulated in City marketing plans or determined by the City to be essential to economic development;
- 3) Political statements, including comments that endorse or oppose political candidates or ballot propositions, are prohibited under state law (RCW 42.52.180);
- 4) Religious statements, including comments that endorse or oppose any type of religion, religious opinions, or activities;
- 5) Posts and comments that include vulgar, threatening, or harassing language;
- 6) Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, socioeconomic status, national origin, physical or mental disability, sexual orientation, or other protected status;
- 7) Obscene or sexual content or links to obscene or sexual content;
- 8) Illegal activity or encouragement of illegal activity;
- 9) Information that may tend to compromise the safety or security of the public or public systems;
- 10) Comments from children under 13 cannot be posted in order to comply with the Children's Online Privacy Protection Act. By posting on the City Social Media site, users acknowledge that they are at least 13 years old. Those 12 years old or younger may e-mail the City instead;
- 11) Content that violates a legal ownership interest of any other party; or
- 12) Anonymous posts.

Communications made through City of Leavenworth Social Media sites in no way constitutes a legal or official notice or comment of or to the City of Leavenworth. (For example, a post or comment that asks for public records will not be considered a public records request under RCW 42.56.) To comment about a specific city project or program, please contact the appropriate department.

III. LINKS POLICY

A. Links to other Social Media Sites and External Websites Provided on City of Leavenworth Social Media Sites

The City of Leavenworth may select links to other Social Media sites and outside websites that offer helpful resources for users. Once an individual links to another page or site, the City's Policies no longer apply and the individual becomes subject to the policies of that page or site. The City of

Leavenworth's Social Media sites are intended specifically to share information about City programs, events, and services. The City of Leavenworth is not responsible for the content that appears on outside links and provides these links as a convenience only. Users should be aware that such external pages and sites and the information found on those pages and sites are not controlled by, provided by, or endorsed by the City of Leavenworth. The City reserves the right to delete links posted by outside individuals that violate the City's Posts Policy at any time without notice.

B. Links by Other Entities to City of Leavenworth Social Media Sites

It is not necessary to get advance permission to link to City of Leavenworth Social Media sites; however, entities and individuals linking to City of Leavenworth Social Media sites may not capture any of the City's Social Media sites within frames, present City of Leavenworth content as their own or otherwise misrepresent any of the City's Social Media site content. Furthermore, they shall not misinform users about the origin or ownership of City of Leavenworth Social Media site content. Links to City of Leavenworth Social Media sites should not in any way suggest that the City of Leavenworth has any relationship or affiliation with that organization or that the City endorses, sponsors, or recommends the information, products or services of that site.

C. Copyright Policy

- 1) All information and materials generated by the City of Leavenworth and provided on City of Leavenworth Social Media sites are the property of the City of Leavenworth. The City retains copyright on all text, graphic images, and other content that was produced by the City of Leavenworth and found on the page. You may print copies of information and material for your own non-commercial use, provided that you retain the copyright symbol or other such proprietary notice intact on any copyrighted materials you copy. Please include a credit line reading: "credit: City of Leavenworth Facebook (or Twitter or YouTube) Page" or "Courtesy of City of Leavenworth."
- 2) Commercial use of text, City logos, photos and other graphics is prohibited without the express written permission of the City of Leavenworth. Representation or use of the City logo on documents not created by the City of Leavenworth is prohibited.
- 3) Any person reproducing or redistributing a third-party copyright must adhere to the terms and conditions of the third-party copyright holder. If you are a copyright holder and you feel that the City of Leavenworth did not use an appropriate credit line, please notify the City Public Records Officer with detailed information about the circumstances, so that the copyright information can be added or the material in question can be removed.

RESOLUTION NO. 1-2020

A RESOLUTION TO ESTABLISH POLICY, PROCEDURES AND RULES OF CONDUCT FOR THE CITY COUNCIL AND ITS MEETINGS, AND RESCINDING RESOLUTION NO. 1-2019 OF THE CITY OF LEAVENWORTH, WASHINGTON

WHEREAS, a predetermined order of procedure for Leavenworth City Council meetings is the most expedient means of conducting Council meetings while also maintaining order and providing equal treatment for both Council members and the public; and

WHEREAS, Resolution Number 1-2019 no longer accurately reflects the preferred procedures for providing public comments at City Council Meetings or Council Study Sessions; and

WHEREAS, the Mayor and City Council have determined that the City Attorney need not be physically present at each City Council meeting;

NOW THEREFORE the City Council of the City of Leavenworth, Washington does resolve as follows:

Section 1. Robert's Rules of Order Adopted. Roberts Rules of Order, Newly Revised, shall govern the deliberations of the Council except when in conflict with any of the following rules.

Section 2. Public Comment at Meetings. The following rules shall apply for the Council to receive comment from the public.

- A. Subjects not on the current agenda: Any member of the public may speak to the Council on an item not on the agenda during the 'Public Comment' portion of the meeting agenda. The person must address the Council from the podium so that the comments can be recorded and included in the minutes. The person must state their name, and the subject of their comments. The Mayor or presiding officer may then allow the comments subject to such time limitations as the Mayor or presiding officer deems necessary. Following such comments, the presiding officer may place the matter on the agenda or a future agenda, or refer the matter to the Council or administration for further information.
- B. Subjects on the current agenda: Any member of the public who wishes to address the Council on an item on the current agenda shall make such request to the presiding officer at the time when comments from the public are requested during the Council's discussion of the agenda item. The Mayor or presiding officer shall rule on the appropriateness of public comments as the agenda item is reached, and may change the order of speakers. The Mayor or presiding officer may allow the comments from the public subject to such time limitations as the Mayor or presiding officer deems necessary.

- C. Public hearings: Members of the public who wish to comment on an item which is before the Council for a formal public hearing will be asked to first sign their name on a list at the podium and then be recognized by the Mayor or presiding officer during the hearing. The person must address the Council from the podium so that the comments can be recorded and included in the minutes. The person must state their name and address. Comments may be limited in length as the Mayor or presiding officer deems necessary.

Section 3. Selection of Mayor Pro Tempore. The Mayor Pro Tempore is elected by the Council from its own membership at the first meeting in January after each General Election and thereafter whenever a vacancy occurs. The Mayor Pro Tempore shall hold office at the pleasure of the Council.

Section 4. Assignment to Standing Committees. Assignment of standing committees of the Council shall be recommended by the Mayor Pro Tempore when newly-elected members take office. Membership on committees shall be appointed by a majority vote of the Council. Membership on standing committees may be reassigned at the discretion of the Mayor Pro Tempore with confirmation by the Council. Standing Committees shall appoint their own chairpersons.

Section 5. Ad Hoc Committees. The Mayor may establish such legislative ad hoc committees as may be appropriate to consider special matters that do not readily fit the committee structure that requires special approach or emphasis.

Section 6. Seating Arrangement. The seating position of Council members shall be determined by seniority on the Council, with the most senior Council member sitting directly to the left of the Mayor and descending through seniority to the newest member of the Council farthest from the Mayor. A Council member may choose to remain in his or her position when a vacancy occurs, at which time the vacant seat shall become the option of the next senior member.

Section 7. Presiding Officers. All meetings of the Council shall be presided over by the Mayor, or, in the Mayor's absence, by the Mayor Pro Tempore. If the Clerk or Deputy Clerk is absent from a Council meeting, the Mayor, or Mayor Pro Tempore, shall appoint one of the members of the Council or the City Administrator to act as Clerk Pro Tempore. The appointment of a member of the Council as Mayor Pro Tempore, or as Clerk Pro Tempore, shall not in any way abridge the Council member's right to vote upon all questions coming before the Council.

Section 8. Study sessions. The purpose of a study session is to provide the City Council with an informal opportunity to study certain matters in detail or to discuss policy issues with staff that may come before the City Council at future regular meetings for formal action. In general, the Council shall meet on the second Tuesday of each month at 8:30 a.m. for a study session at which no action will be taken on issues. It is a time for the Council to have discussions and provide direction on background information for upcoming City Council agenda items, to review and request additional information, to discuss prior month committee meeting topics of interest and information for the Council as a whole to consider, or to form a council subcommittee prior to formal action and to clarify any final amendments made from previous discussions before formal action. The Mayor or presiding officer may allow the comments from the public subject to such time limitations as the Mayor or presiding officer deems necessary.

Section 9. Regular Meetings. Regular meetings of the Council shall be held as provided by ordinance. The purpose of a regular meeting is to hear public comments and to consider recommendations from staff, and to take action on items of policy.

Section 10. Dissenting Opinions. Any Council member shall have the right to have the reason(s) for their dissent from or their protest against any action of the Council entered into the minutes. In general, such dissent or protest to be entered in the minutes shall be made in the following manner: "I would like the minutes to show that I am opposed to this action for the following reason(s)..." Any such protest or dissent must be in summary form so as to avoid unnecessary delay or interference with regular Council business.

Section 11. Order of Business. The order of business will normally be as follows:

Call to Order

Flag Salute

Roll Call

Approval of Consent Agenda

Public Safety Reports

Councilmember and Committee Reports

Mayor/Administration Reports

Correspondence from the Public

Comments from the Public on Items Not on the Agenda

Resolutions, Ordinances, Orders and Other Business

Information Items for Future Consideration

Executive Session

Adjournment

Section 12. Motions, Resolutions, and Ordinances. Motions shall be reduced to writing when required by the Mayor or any member of the Council. All resolutions and ordinances shall be in writing.

Section 13. Motions to Reconsider. Motions to reconsider must be by a member who voted with the majority, and at the same or next succeeding meeting of the Council.

Section 14. Removal of Item from Consent Agenda. An item or items listed on the Consent Agenda may be removed from the Consent Agenda and shifted to an alternative, appropriate location in the Agenda, to allow for full Council discussion and comment, by any Council member.

Section 15. Record of Proceedings. The Clerk shall keep a correct journal of all proceedings and at the desire of any member the ayes and nays shall be taken on any question and entered into the journal.

Section 16. Questions of Order. All questions of order shall be decided by the presiding officer of the Council with the right of appeal to the Council by any member.

Section 17. Obligation to Vote. Each member present or by conference call must vote on all questions put to the Council. Members voting by conference call are limited to three meetings per year. The following exceptions to voting are allowed:

- A. Matters with respect to which the Council member has not been present for a meeting at which the item was discussed;
- B. Such Council member has a personal financial interest; or
- C. Where such member's vote would violate the Appearance of Fairness Doctrine.

Beyond these exceptions, any abstention from required voting by a Council member shall be counted as a vote with the majority provided, however, if there is not majority then such vote shall be counted as an affirmative vote.

Section 18. Conflict of Interest and Appearance of Fairness Issues. A Council member prohibited from voting because of a conflict of interest or a potential violation of the Appearance of Fairness Doctrine shall not participate in any City Council discussion and they shall remove themselves from the Council Chambers until after the vote. If questions regarding conflict of interest or appearance of fairness are uncertain the Council shall make the final decision with advice from the City Attorney.

Section 19. Actions Taken During Public Meetings. All regular meetings of the Council shall be public and no ordinance, resolution, rule or regulation shall be adopted except in a regular meeting open to the public the date of which is fixed by law or rule.

In order to provide the public with an opportunity to learn about items being brought before the Council for consideration, it is the want of the Council that complex or items that maybe generate a higher level of controversy will appear, in general, on a total of three agendas (study sessions and/or regular meetings) before the Council takes action on the item.

Section 20. Amending Rules. The rules of the Council may be altered, amended, or temporarily suspended by a vote of two-thirds of the members present.

Section 21. Staff Attendance at Council Meetings. The City Administrator, , Development Services Manager, Director of Public Works and Finance Director/City Clerk shall attend all meetings of the Council and remain for the meeting for such length of time as the Council may direct. Other employees of the City of Leavenworth shall attend Council meetings when requested by the Mayor and/or City Administrator.

Section 22. Duties of Presiding Officer. It shall be the duty of the presiding officer at a Council meeting to:

- A. Call the meeting to order;

- B. Keep the meeting to its order of business;
- C. State each motion and require a second to that motion before permitting discussion;
- D. Handle discussion of the Council in an orderly manner:
 - 1. Provide each Council member with an opportunity to speak;
 - 2. Permit audience participation at appropriate times, requiring that audience members address the Council from the podium so that discussion can be recorded for the minutes;
 - 3. Keep all speakers to the rules and to the questions;
 - 4. Provide speakers on opposing sides of an issue with alternating opportunities;
 - 5. Put motions to a vote and announce the outcome;
 - 6. Recommend motions for adjournment;
 - 7. Appoint committees when authorized to do so;
 - 8. Polling of the Council shall be conducted in the same order as the Roll Call or by a vote of the hand.

Section 23. Severability. If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 24. Repealer. Resolution No. 01-2019 is hereby repealed.

ADOPTED by the City Council and signed by the Mayor on the 28th day of January, 2020.

APPROVED:


Carl J. Florea, Mayor

ATTEST:


Chantell Steiner, Finance Director/City Clerk

Title 2
ADMINISTRATION AND PERSONNEL

Chapters:

- 2.01 Mayor**
- 2.02 City Administrator**
- 2.04 City Council**
- 2.08 Officers – Duties Generally**
- 2.12 Officers – Bonds**
- 2.16 City Attorney**
- 2.20 City Clerk-Treasurer**
- 2.22 Deputy City Clerk and Deputy City Treasurer**
- 2.26 Public Records**
- 2.38 Design Review Board**
- 2.40 City Planning Commission**
- 2.42 Library Advisory Board**
- 2.44 Retirement and Social Security Systems**
- 2.56 Regulations for Reporting Improper Governmental Action**
- 2.60 City Hall/Library Building and Grounds Regulations**

Chapter 2.01
MAYOR

Sections:

- 2.01.010 Personnel officer.**
- 2.01.020 Policies to supersede existing city council resolutions.**
- 2.01.030 Mayor’s compensation.**

2.01.010 Personnel officer.

The mayor, or his/her authorized representative, shall be the administrative and personnel officer of the city. The mayor shall prepare and administer all city personnel matters including comprehensive personnel rules, policies and administrative procedures based upon this chapter, applicable state and federal laws and applicable collective bargaining agreements. The responsibilities of the mayor or his/her authorized representative shall include the following:

- A. Preparation and recommendation of a classification plan for consideration by the city council;
- B. Recruitment;
- C. Work effectiveness programs;
- D. Personnel files;
- E. Performance records;
- F. Grievance procedures under collective bargaining agreements;
- G. Disciplinary procedures;
- H. Administration of pay plans, eligibility lists, layoff procedures and policies, hours of work and holidays, and other fringe benefits, and probationary periods. [Ord. 1494 § 1 (Att. A), 2014; Ord. 1404 § 1 (Att. A), 2011; Ord. 1109 § 1, 1999.]

2.01.020 Policies to supersede existing city council resolutions.

Personnel policies developed by the mayor shall be adopted by resolution by the city council and supersede any previous city council resolutions relating to personnel administration. [Ord. 1494 § 1 (Att. A), 2014; Ord. 1404 § 1 (Att. A), 2011; Ord. 1109 § 1, 1999.]

2.01.030 Mayor's compensation.

Commencing January 1, 2015, the mayor shall be paid a salary of \$1,500 per month. [Ord. 1494 § 1 (Att. A), 2014; Ord. 1404 § 1 (Att. A), 2011; Ord. 1340 § 1, 2009; Ord. 1317 § 1, 2008; Ord. 1298 § 1, 2007.]

Chapter 2.02 CITY ADMINISTRATOR

Sections:

2.02.010 Appointment.

2.02.020 Duties.

2.02.010 Appointment.

The administrator shall be appointed by the mayor and shall be removed at the pleasure of the mayor as provided by law. The appointment of the administrator shall be in writing signed by the mayor and filed with the city clerk-treasurer. [Ord. 758 § 2, 1985.]

2.02.020 Duties.

The mayor of the city is authorized to appoint a city administrator whose duties shall be defined by a written contract between the city and the administrator which duties shall in general be as follows:

The city administrator shall have the following specific duties, powers and responsibilities, in addition to others provided by law, agreement or otherwise:

A. Under the direction and authority of the mayor, the administrator shall supervise, administer and coordinate the activities and functions of the various city offices, departments, commissions and boards in carrying out the requirements of city ordinances and the policies of the city council. The administrator shall administer and supervise the carrying out of the decisions, regulations and policies of the various city departments, commissions and boards.

B. The administrator shall regularly report to the mayor concerning the status of all assignments, duties, projects and functions of the various city offices, departments, commissions and boards. The administrator shall also report to the city council at council meetings.

C. With the cooperation and assistance of the finance committee of the council of the city the administrator shall assist the city clerk-treasurer with the preparation and submission of the annual budget to the mayor and the council.

D. The administrator shall serve as personnel officer of the city, under the direction of the mayor.

E. The administrator shall supervise all purchasing by the various city offices, departments, commissions and boards. [Ord. 758 § 1, 1985.]

**Chapter 2.04
CITY COUNCIL¹**

Sections:

2.04.010 Study sessions – Purpose.

2.04.020 Study sessions – When.

2.04.030 Regular meetings – When.

2.04.040 City council members – Compensation.

2.04.010 Study sessions – Purpose.

The purpose of a study session is to provide the city council with an informal opportunity to study certain matters in detail or to discuss policy issues with staff that may come before the city council at regular meetings for formal action. [Ord. 1495 § 1 (Att. A), 2014; Ord. 1411 § 1 (Att. A), 2012; Ord. 1407 § 1 (Att. A), 2012; Ord. 1159 § 1, 2001.]

2.04.020 Study sessions – When.

The study sessions of the city council shall be held on the second Tuesday of each and every month at the City Hall in the city, commencing at 8:30 a.m. or at such other time and place as the city council shall designate by motion. [Ord. 1581 § 1, 2019; Ord. 1568 § 1, 2018; Ord. 1495 § 1 (Att. A), 2014; Ord. 1411 § 1 (Att. A), 2012; Ord. 1407 § 1 (Att. A), 2012; Ord. 1325 § 1, 2008; Ord. 1203 § 1, 2003; Ord. 1159 § 1, 2001.]

2.04.030 Regular meetings – When.

The regular meetings of the city council shall be held on the second and fourth Tuesdays of each and every month at the City Hall in the city of Leavenworth, commencing at 6:30 p.m. or at such other time and place as the city council shall designate by motion. In the event that a regular meeting falls on a holiday, the regular meeting shall be scheduled for the next business day. All final actions on resolutions and ordinances must take place within the corporate limits of the city. All meetings of the city council shall be open to the public, except for as provided by law. [Ord. 1495 § 1 (Att. A), 2014; Ord. 1411 § 1 (Att. A), 2012; Ord. 1407 § 1 (Att. A), 2012; Ord. 1325 § 2, 2008; Ord. 1252 § 1, 2005; Ord. 1249 § 1, 2005; Ord. 1159 § 1, 2001; Ord. 945 § 1, 1993; Ord. 824-A § 1, 1988; Ord. 773 § 1, 1985; Ord. 595 § 1, 1977.]

2.04.040 City council members – Compensation.

Commencing January 1, 2015, the city council members shall be paid a salary of \$500.00 per month upon the next election of each position. [Ord. 1495 § 1 (Att. A), 2014; Ord. 1411 § 1 (Att. A), 2012; Ord. 1407 § 1 (Att. A), 2012; Ord. 1299 § 1, 2007.]

¹For statutory provisions regarding time and place of council meetings, see RCW 35A.12.110.

Chapter 2.08 OFFICERS – DUTIES GENERALLY

Sections:

2.08.010 Designated.

2.08.010 Designated.

The duties of officers of the city shall be such as are prescribed by the laws of the state now in effect or that may hereafter become effective and such other and further duties as the city council may, from time to time, require by ordinance or resolution. [Ord. 160 § 5, 1915.]

Chapter 2.12 OFFICERS – BONDS

Sections:

2.12.010 Expenses charged to city – Exception.

2.12.010 Expenses charged to city – Exception.

All officials and officers of the city who shall be hereafter, or are required, by the laws of the state and by ordinances of the city to furnish surety bonds are authorized to furnish surety company bonds and charge expenses thereof to the city; provided, however, that the council shall reserve the right to reject any surety company's bond on account of excessive premium or other reasons. [Ord. 76 § 1, 1911.]

Chapter 2.16 CITY ATTORNEY¹

Sections:

2.16.010 Appointment – Confirmation – Term.

2.16.020 Residency not required.

2.16.040 Duties.**2.16.010 Appointment – Confirmation – Term.**

The city attorney shall be appointed by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council. Such appointment shall be in writing, signed by the mayor, and filed with the city clerk-treasurer. Such appointment shall be for an indefinite term. [Ord. 426 § 1, 1960.]

2.16.020 Residency not required.

The city attorney so appointed need not be a resident of the city. [Ord. 426 § 2, 1960.]

2.16.040 Duties.

The city attorney shall be the legal advisor of the city council and of all the officers of the city in relation to matters pertaining to their respective offices. He shall represent the city in all litigation and all courts in which the city is a party or directly interested, and shall act generally as attorney for the city. He shall perform such other duties as the city council may direct. [Ord. 426 § 4, 1960.]

¹For statutory provisions concerning the appointment and duties of the city attorney, see RCW 35A.12.020.

Chapter 2.20 CITY CLERK-TREASURER¹

Sections:

2.20.010 Created.**2.20.010 Created.**

The offices of city treasurer and city clerk are combined into the single office of city clerk-treasurer in the city of Leavenworth. [Ord. 717 § 1, 1982.]

¹For statutory provisions concerning the appointment and duties of city clerks, see RCW 35A.12.020, 35A.12.150, 35A.14.700, and 35A.33.052.

Prior ordinance history: Ords. 372 and 484.

Chapter 2.22

DEPUTY CITY CLERK AND DEPUTY CITY TREASURER

Sections:

2.22.010 Appointment.

2.22.020 Salaries.

2.22.030 Removal.

2.22.010 Appointment.

The mayor or his designee is hereby authorized to appoint a deputy city clerk and a deputy city treasurer whose duties are defined in general in Exhibit A of the ordinance codified in this chapter. [Ord. 1129 § 1, 2000.]

2.22.020 Salaries.

The salaries for the positions of deputy city clerk and deputy city treasurer shall be adopted by separate ordinance. [Ord. 1129 § 2, 2000.]

2.22.030 Removal.

The mayor or his designee shall have the power of appointment and removal of the deputy city clerk and the deputy city treasurer subject to any applicable law, rule, or regulation relating to civil service. [Ord. 1129 § 3, 2000.]

Chapter 2.26

PUBLIC RECORDS

Sections:

2.26.010 Preservation, transferal or destruction in accordance with statutory provisions.

2.26.010 Preservation, transferal or destruction in accordance with statutory provisions.

Public records of the city, as defined in RCW 40.14.010, shall be preserved, transferred and destroyed in accordance with Chapter 40.14 RCW and Washington Administrative Code regulations promulgated

thereunder. [Ord. 688 § 1, 1981.]

Chapter 2.38 DESIGN REVIEW BOARD¹

Sections:

2.38.010 Created – Membership, terms, appointments, approval and compensation.

2.38.020 Powers and duties.

2.38.030 Report to council.

2.38.040 Meetings.

2.38.050 Quorum and voting.

2.38.060 Roles and procedures.

2.38.070 Appeals.

2.38.010 Created – Membership, terms, appointments, approval and compensation.

A. There is established a design review board consisting of five members, plus an alternate and a construction advisor. The term of appointment to the board shall be four years and members can be reappointed for succeeding terms. Positions one, two, and five shall have terms expiring June 1st of succeeding years. Positions three and four shall have terms that expire December 1st of succeeding years. New appointments shall be made in a timely manner in order to assure staggering of time for appointments.

B. All members shall be appointed by the mayor and confirmed by a majority of the city council. Vacancies occurring other than through the expiration of a term shall be filled by the mayor with confirmation by a majority of the city council. Any member may be removed at any time by the mayor.

C. Members shall be selected without regard to political affiliation. Serving on the design review board requires residing within the boundaries of the Cascade School District or being a resident of Chelan County and owning a business within the city. Prior to appointment, members must demonstrate a fundamental knowledge of Old World Bavarian Alpine design and the purpose of the city's ordinances regulating architectural design and signs. The mayor shall appoint members based on consideration of the candidates' knowledge regarding the Old World Bavarian Alpine theme and/or demonstration of the following:

1. Travel throughout the Bavarian Alpine region of Bavaria;
2. Working or living in the Bavarian Alpine region of Bavaria;
3. Demonstrate a fundamental knowledge of Old World Bavarian Alpine architecture through the design or building of Old World Bavarian Alpine style structures;
4. Demonstrate a fundamental knowledge of Old World Bavarian Alpine design elements such as color, window treatment, murals, overhangs and building materials;
5. Demonstrate, via travel throughout Germany, Austria, and/or Switzerland, the ability to differentiate between regional design elements.

D. Members of the design review board shall serve without compensation.

E. An alternate design review board member shall be appointed by the mayor, as outlined in subsection (B) of this section, and shall be selected as outlined in subsection (C) of this section. The alternate shall serve a term of four years from time of appointment and can be reappointed for succeeding terms. The alternate shall be called upon to attend design review board meetings which cannot obtain a quorum, and shall fill the seat of any regular member of the design review board that is absent. Should the full board be present and the alternate also be present, the alternate shall not make motions or vote but may participate in the discussion. The alternate shall serve without compensation. The alternate shall automatically be appointed to a regular position should a vacancy in such position occur during the alternate's tenure.

F. A nonvoting construction advisor may be appointed by the mayor, as outlined in subsection (B) of this section, and shall be selected as outlined in subsection (C) of this section. The advisor shall provide technical expertise to the design review board members when requested. They shall serve a term of four years from time of appointment and can be reappointed for succeeding terms. The advisor shall serve without compensation. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1311 § 1, 2008; Ord. 1169 § 1, 2001; Ord. 1127 § 1, 2000.]

2.38.020 Powers and duties.

A. Generally. The design review board shall perform all duties specified under Chapters 14.08 and 14.10 LMC, as the same now exist or are hereafter amended, together with any other duties or authorities which may be conferred upon them by the city council; provided, that nothing in this chapter shall be construed as limiting the right of the city to exercise any power granted to a code city as provided by law.

B. Rules and Procedures. The design review board may adopt rules of procedure for the conduct of meetings and other functions delegated to the design review board by the city council; provided, that

the rules of procedure adopted are in accordance with state law and city ordinances. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1127 § 1, 2000.]

2.38.030 Report to council.

The design review board shall, as requested by the council, make a written report to the mayor and city council. In its report, the design review board shall make written recommendations to the mayor and city council on matters that are covered under the prescribed duties and authority of the design review board. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1127 § 1, 2000.]

2.38.040 Meetings.

The time and place of the board's meetings shall be established in the bylaws. All meetings shall be open to the public and shall be conducted in accordance with Chapter 42.30 RCW, State Open Public Meetings Act, as the same now exists or is hereafter amended. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1127 § 1, 2000.]

2.38.050 Quorum and voting.

A. Three members of the design review board shall constitute a quorum for the transaction of business.

B. A quorum shall be required for the transaction of any business of the design review board.

C. Each regularly appointed member, including the chairperson, shall be entitled to one vote on any matter that may come before the design review board. The alternate member shall vote when one of the regular members is absent; otherwise, the alternate shall participate but not vote. The record shall show the individual vote of each member.

D. Actions requiring a vote of the design review board must have a simple majority of the quorum present for a favorable vote.

E. If there are only three board members at a meeting and one member is subject to the appearance of fairness doctrine, the meeting may proceed under the doctrine of necessity. However, the board may postpone its review of an item until the next meeting if the affected applicant agrees to the postponement.

F. The design review board shall take action to approve, approve with conditions, deny, or continue a decision to another specified time and date on any matter which comes before it on which it is authorized to act. On any matter that the design review board is authorized to act, if there is failure to

make a motion to approve, approve with conditions, or continue a decision on such matter, such shall be regarded as a denial. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1127 § 1, 2000.]

2.38.060 Roles and procedures.

A. The design review board roles and responsibilities are defined in LMC 21.03.050.

B. All applications shall be processed consistent with LMC 21.09.050. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012; Ord. 1127 § 1, 2000.]

2.38.070 Appeals.

Any person aggrieved by a final decision on a sign or design application may appeal pursuant to LMC 21.11.025. [Ord. 1609 § 1 (Att. A), 2020; Ord. 1426 § 1 (Att. A), 2012.]

¹Prior ordinance history: Ords. 983, 992, 1012 and 1059.

Chapter 2.40 CITY PLANNING COMMISSION¹

Sections:

2.40.010 Created – Membership.

2.40.020 Term of office.

2.40.030 Compensation – Removal.

2.40.040 Secretary designated – Compensation.

2.40.050 Quorum.

2.40.060 Powers and duties – Generally.

2.40.070 Duties – Recommendations and reports.

2.40.090 Annual report to council required.

2.40.010 Created – Membership.

In accordance with Washington law, there is created a city planning commission consisting of seven members whose positions shall be designated numerically Position 1 through 7, respectively. Following the effective date of the ordinance codified in this section, the mayor shall appoint the present members of the planning commission to Positions 1 through 7. The initial terms of the seven planning commission members shall expire on April 1st of the year indicated:

Position 1 –	1998
Position 2 –	1999
Position 3 –	2000
Position 4 –	2001
Position 5 –	1997
Position 6 –	2002
Position 7 –	2002

All planning commission members shall be appointed by the mayor with confirmation by the city council. Members of the Leavenworth planning commission shall reside within the city limits of Leavenworth, except that up to two members may reside outside the city limits of Leavenworth, provided they reside or own property within the urban growth area as depicted by the Leavenworth comprehensive plan. [Ord. 1388 § 1 (Exh. A), 2011; Ord. 1094 § 2 (Exh. A), 1998.]

2.40.020 Term of office.

Following the expiration of the initial term of each position on the planning commission, terms shall be for four years. [Ord. 1094 § 2 (Exh. A), 1998.]

2.40.030 Compensation – Removal.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms. Vacancies shall be filled by appointment by the mayor with confirmation by the city council to fill any portion of an unexpired term. Members may be removed, after public hearing, by the mayor, with the approval of the city council, for inefficiency, neglect of duty or malfeasance in office. The members shall be selected without respect to political affiliations and they shall serve without compensation. [Ord. 1388 § 2 (Exh. A), 2011; Ord. 1094 § 2 (Exh. A), 1998.]

2.40.040 Secretary designated – Compensation.

The planning commission may designate one of its members to act as secretary, or if requested by the commission, the mayor shall designate a member of the paid staff of the city to serve as

secretary. The compensation of the secretary shall be determined by the Leavenworth city council. [Ord. 1094 § 2 (Exh. A), 1998.]

2.40.050 Quorum.

A majority of the membership of the planning commission shall constitute a quorum for the transaction of business. Any action taken by a majority of those present when those present constitute a quorum, at any regular or special meeting of the planning commission, shall be deemed and taken as the action of the commission. [Ord. 1094 § 2 (Exh. A), 1998.]

2.40.060 Powers and duties – Generally.

The planning commission shall have all of the powers and perform each and all of the duties specified by Chapter 35A.63 RCW, together with any other duties or authority which may hereafter be conferred upon them by the laws of the state of Washington, the performance of such duties and the exercise of such authority to be subject to each and all the limitations expressed in such legislative enactment or enactments. [Ord. 1094 § 2 (Exh. A), 1998.]

2.40.070 Duties – Recommendations and reports.

The city council may refer to the planning commission, for its recommendation and report, any ordinance, resolution or other proposal relating to any of the matters and subjects referred to in Chapter 35A.63 RCW and any other laws of the state of Washington, and the commission shall promptly report to the council thereon, making such recommendations and giving such counsel as it may deem proper in the premises. [Ord. 1094 § 2 (Exh. A), 1998.]

2.40.090 Annual report to council required.

The planning commission, at or before its first regular meeting in March of each year, shall make a full report in writing to the city council of its transactions and expenditures, if any, for the preceding year, with such general recommendations as to matters covered by its prescribed duties and authority as may seem proper to it. [Ord. 1094 § 2 (Exh. A), 1998.]

¹For statutory provisions regarding planning commissions in general, see Chapter 35.63 RCW.

Prior ordinance history: Ords. 404, 605, 796, 1018 and 1030.

Chapter 2.42

LIBRARY ADVISORY BOARD

Sections:

2.42.010 Definitions.

2.42.020 Eligibility.

2.42.030 Term - Vacancy - Expulsion.

2.42.040 Officers - Meetings - Quorum.

2.42.050 Powers and duties.

2.42.060 Budget.

2.42.070 Promulgation of rules and regulations.

2.42.010 Definitions.

For purposes of this chapter unless otherwise clearly required by the context, the following terms are defined as follows:

- A. "Board" means the city of Leavenworth advisory library board of trustees.
- B. "Library" means the library located in the City Hall/library complex in the city of Leavenworth.
- C. "Library district" means the North Central Regional Library District (NCRL). [Ord. 978 § 1, 1995.]

2.42.020 Eligibility.

Pursuant to RCW 27.12.190 and 35.24.020, there is created an advisory library board, consisting of five members who shall be appointed by the mayor, with the confirmation of the city council. Board members shall reside within the service area of the library. Board members shall not receive any compensation for their services, but necessary expenses actually incurred shall be paid from city and/or NCRL funds, as applicable, upon prior approval of the paying agency. [Ord. 978 § 2, 1995.]

2.42.030 Term - Vacancy - Expulsion.

The terms of office shall begin after the annual meeting in June. Trustees shall be appointed to serve for three years. No member shall serve more than three full consecutive terms. If a vacancy occurs

before a member's term is finished, new trustees shall be appointed with term lengths that allow preservation of the overlap of terms. Vacancies shall be filled as soon as possible in the following manner: the board shall appoint a committee of not less than two people who shall notify the mayor of the vacancy, post a public notice, and recruit potential board members. These potential members shall appear before the board at the annual meeting, or upon occurrence of a vacancy. The board shall then make a written recommendation to the mayor for the appointment. The recruit shall become a board member upon approval of the mayor and the city council. A board member may be nonvoluntarily removed only by the vote of the city council after a public hearing upon a written complaint stating the grounds for removal, which complaint, with a notice of the time and place of the hearing, shall have been served upon the board member at least 15 days before the hearing. Reasons for expulsion include but are not limited to nonattendance of meetings or failure to abide by resolutions and bylaws. [Ord. 1190 § 1, 2003; Ord. 978 § 3, 1995.]

2.42.040 Officers – Meetings – Quorum.

A. At the first meeting following appointment of the initial board members and thereafter at the first meeting in June each year, the board members shall elect from the members of the board a president and secretary-treasurer. Additional officers including vice-president, separate secretary and treasurer, publicity officer, and others will be elected as deemed necessary by the board.

It shall be the duty of the president to preside at all meetings of the board and the duty of the vice-president to do so in the absence of the president. The secretary shall keep minutes of all meetings and all proceedings of the board and provide copies of the same to the city administrator within one week after each board meeting. The city clerk-treasurer shall account for all funds expended pursuant to the powers and duties specified herein and shall provide an accounting of all funds and expenditures each month to the city clerk-treasurer.

B. A majority of the board shall constitute a quorum for the transaction of business and three affirmative votes shall be necessary to carry any proposition. The board shall hold a meeting at least once every month. [Ord. 978 § 4, 1995.]

2.42.050 Powers and duties.

The duties of the board are as follows:

A. To serve in a liaison capacity between the city, the Friends of the Library, the NCRL staff and NCRL board and to thereafter recommend to the city council and/or the NCRL all actions the board deems necessary and appropriate to carry out the terms, conditions and purposes of the library service agreements now in effect or as may hereinafter be entered or modified between the city and the library district;

- B. To provide recommendations to the city council and/or the NCRL as to the advisability of services to the greatest number of people at the most reasonable cost to the city;
- C. The board may solicit or receive gifts or bequests, or seek and write grants. The board may recommend to the Friends of the Library, the city council and/or the NCRL, as applicable, how library funds including gifts and bequests are used;
- D. To meet and work with the city Friends of the Library, and the regional library board, to enhance the efforts of all the groups and to avoid duplication of efforts;
- E. To have at least one board member attend all city council committee meetings, and NCRL board meetings, that involve Leavenworth library business. The city shall notify the board in advance of any such meeting, as soon as said meeting is planned;
- F. In cooperation with the city, the board shall attend to the property of the library, including the facilities, rooms or buildings, subject to approval of the council. The board may plan, promote, manage, develop and maintain the library, to the extent such powers are not preempted by the library district pursuant to Chapter 27.12 RCW et seq. as now exists or may hereafter be amended;
- G. To file an annual report with the city. [Ord. 978 § 5, 1995.]

2.42.060 Budget.

- A. The city shall notify the board prior to creation of, and include at least one board member in the discussion of, any budget that includes library expenditures. The board shall make recommendations to the mayor and the city council for the development of the library programs and facilities. The board shall make any budget requests to the city prior to September 1st of each year.
- B. The board shall make recommendations to the NCRL and the Leavenworth Friends of the Library each year, prior to the compilation of the preliminary budget for the development of the library programs and facilities, as it may deem advisable for the guidance of the regional board and Friends in preparing the budget for the ensuing year. [Ord. 978 § 6, 1995.]

2.42.070 Promulgation of rules and regulations.

The board shall promulgate bylaws, rules and regulations for its guidance and for the government and management of the library as it deems necessary, to the extent not preempted by Chapter 27.12 RCW et seq. as now exists or may hereafter be amended. [Ord. 978 § 7, 1995.]

Chapter 2.44 RETIREMENT AND SOCIAL SECURITY SYSTEMS¹

Sections:

2.44.010 City participation in Social Security system.

2.44.020 Social Security system plan submittal authorized.

2.44.030 Payments to fund and deduction from salaries authorized.

2.44.040 Responsibility of officials.

2.44.050 Effective date.

2.44.060 City participation in the State Employees' Retirement System authorized.

2.44.070 Copy to retirement board.

2.44.010 City participation in Social Security system.

This municipality is a participant in the Social Security system and the benefits of old age and survivors' insurance are extended to its employees and officers. [Ord. 375, 1952.]

2.44.020 Social Security system plan submittal authorized.

The mayor and the city clerk-treasurer are authorized to execute and deliver to the Washington Department of Employment Security for its approval and plan or plans required under the provisions of Section 5 of said enabling act and of the Social Security Act to extend coverage to the employees and officers of this municipality and to do all other things necessary to that end. [Ord. 375, 1952.]

2.44.030 Payments to fund and deduction from salaries authorized.

The proper fiscal officers are authorized to make all required payments into the contribution fund established to the sale enabling act and to establish such system of payroll deductions from the salaries of employees as may be necessary to their coverage under the old age and survivors' insurance system. [Ord. 375, 1952.]

2.44.040 Responsibility of officials.

The proper officials of the municipality shall do all things necessary to the continued implementation of the system. [Ord. 375, 1952.]

2.44.050 Effective date.

This municipality shall become a participant in the Social Security system effective as of January 1, 1952. [Ord. 375, 1952.]

2.44.060 City participation in the State Employees' Retirement System authorized.

The city does authorize and approve the membership and participation of its eligible employees in the State Employees' Retirement System, pursuant to RCW 41.40.062, and authorizes the expenditure of the necessary funds to cover its proportionate share for participation in the system. [Ord. 1203 § 2, 2003; Ord. 465 § 1, 1964.]

2.44.070 Copy to retirement board.

The city clerk-treasurer is directed to transmit a certified copy of the ordinance codified in this section and LMC 2.44.060 to the retirement board of the system as evidence of such authorization and approval. [Ord. 465 § 2, 1964.]

¹For statutory provisions regarding the implementation of the Federal Social Security Plan, see generally Chapter 41.48 RCW; for provisions regarding the Washington Public Employee's Retirement System, see generally Chapter 41.40 RCW.

Chapter 2.56 REGULATIONS FOR REPORTING IMPROPER GOVERNMENTAL ACTION

Sections:

2.56.010 Policy statement.

2.56.020 Definitions.

2.56.030 Procedures for reporting.

2.56.040 Protection against retaliatory actions.

2.56.050 Responsibilities.

2.56.060 List of agencies.

2.56.010 Policy statement.

It is the policy of the city: (A) to encourage reporting by its employees of improper governmental action taken by city officers or employees, and (B) to protect the city employees who have reported improper governmental actions in accordance with Leavenworth's policies and procedures. [Ord. 934 § 1, 1993.]

2.56.020 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

"Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

"Improper governmental action" means any action by a city officer or employee:

1. That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and
2. That: (a) is in violation of any federal, state, or local law or rule, (b) is an abuse of authority, (c) is of substantial and specific danger to the public health or safety, or (d) is a gross waste of public funds.

"Improper governmental action" does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil service laws, alleged violations of labor agreements or reprimands.

"Retaliatory action" means any adverse change in the terms and conditions of a city employee's employment. [Ord. 934 § 2, 1993.]

2.56.030 Procedures for reporting.

A. City employees who become aware of improper governmental actions should raise the issue first with their supervisor. If requested by the supervisor, the employee shall submit a written report to the supervisor, or to some person designated by the supervisor, stating in detail the basis for the employee's belief that an improper governmental action has occurred. Where the employee reasonably believes the improper governmental action involves his or her supervisor, the employee

may raise the issue directly with the city administrator or such other person as may be designated by the city mayor to receive reports of improper governmental action.

B. In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, the employee may report the improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action.

C. The supervisor, the city administrator or the mayor's designee, as the case may be, shall take prompt action to assist the city in properly investigating the report of improper governmental action. City officers and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of a summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

D. City employees may report information about improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action if the city employee reasonably believes that an adequate investigation was not undertaken by the city to determine whether an improper governmental action occurred, or that insufficient action has been taken by the city to address the improper governmental action or that for other reasons the improper action is likely to recur.

E. City employees who fail to make a good-faith attempt to follow the city procedures in reporting improper governmental action shall not receive the protections provided by the city in these procedures. [Ord. 934 § 3, 1993.]

2.56.040 Protection against retaliatory actions.

A. City officials and employees are prohibited from taking retaliatory action against a city employee because he or she has in good faith reported an improper governmental action in accordance with these policies and procedures.

B. Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their supervisor, the city administrator or the mayor's designee. City officials and supervisors shall take appropriate action to investigate and address complaints of retaliation.

C. If the employee's supervisor, the city administrator or the mayor's designee, as the case may be, does not satisfactorily resolve a city employee's complaint that he or she has been retaliated against

in violation of this policy, the city employee may obtain protection under this policy and pursuant to state law by providing a written notice to the city council that:

1. Specifies the alleged retaliatory action; and
2. Specifies the relief requested.

D. City employees shall provide a copy of their written charge to the city administrator no later than 30 days after the occurrence of the alleged retaliatory action. The city administrator shall respond within 30 days to the charge of retaliatory action.

E. After receiving either the response of the city or 30 days after the delivery of the charge to the city, the city employee may request a hearing before a state administrative law judge to establish that a retaliatory action occurred and to obtain appropriate relief provided by law. An employee seeking a hearing should deliver the request for hearing to the city administrator within the earlier of either 15 days of delivery of the city response to the charge of retaliatory action, or 45 days of delivery of the charge of retaliation to the city for response.

F. Upon receipt of request for hearing, the city shall apply within five working days to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge:

Office of Administrative Hearings

P.O. Box 42488, 4224 Sixth S.E.

Rowe Six, Bldg. 1

Lacey, WA 98504-2488

(206) 459-6353

The city will consider any recommendation provided by the administrative law judge that the retaliator be suspended with or without pay, or dismissed. [Ord. 934 § 4, 1993.]

2.56.050 Responsibilities.

The city administrator is responsible for implementing the city's policies and procedures: (A) for reporting improper governmental action, and (B) for protecting employees against retaliatory actions.

This includes ensuring that this policy and these procedures: (A) are permanently posted where all employees will have reasonable access to them, (B) are made available to any employee upon request, and (C) are provided to all newly hired employees. Officers, managers and supervisors are responsible for ensuring the procedures are fully implemented within their areas of responsibility. Violations of this policy and these procedures may result in appropriate disciplinary action up to and including dismissal. [Ord. 934 § 5, 1993.]

2.56.060 List of agencies.

A list of agencies responsible for enforcing federal, state and local laws and investigating other issues involving improper governmental action is attached as Exhibit A to the ordinance codified in this chapter. Employees having questions about these agencies or the procedures for reporting improper governmental action are encouraged to contact the city administrator. [Ord. 934 § 6, 1993.]

Chapter 2.60 CITY HALL/LIBRARY BUILDING AND GROUNDS REGULATIONS

Sections:

2.60.010 *Repealed.*

2.60.020 **Vehicle restrictions.**

2.60.030 **Parking.**

2.60.040 **Police authority.**

2.60.050 **Dogs or animals restricted in buildings.**

2.60.060 **Violation – Penalty.**

2.60.010 **Weapons prohibited.**

Repealed by Ord. 1430. [Ord. 976 § 1, 1995.]

2.60.020 **Vehicle restrictions.**

No vehicle or combination of vehicles capable of movement on a street or highway, and over 20 feet in combined, total length, shall enter, stand or park on the grounds of the City Hall/library complex at 700 Highway 2 unless a waiver is granted in writing by the mayor of the city or the mayor's designee. [Ord. 976 § 2, 1995.]

2.60.030 **Parking.**

Parking at the city/library complex shall be limited to City Hall and library employees or users only, during regular business hours. No overnight parking shall be permitted at said complex without written permission of the mayor of the city or the mayor's designee. [Ord. 976 § 3, 1995.]

2.60.040 Police authority.

All state, federal and local law enforcement agencies shall have full police powers in the City Hall/library complex and adjacent grounds at 700 Highway 2, Leavenworth, Washington to enforce all federal, state, county and city laws and regulations. [Ord. 976 § 4, 1995.]

2.60.050 Dogs or animals restricted in buildings.

No dogs or animals shall be allowed in the building with the exception of seeing-eye dogs and official police dogs, unless a waiver is granted in writing by the mayor of the city or the mayor's designee. [Ord. 976 § 5, 1995.]

2.60.060 Violation – Penalty.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$250.00 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed. [Ord. 976 § 6, 1995.]



2020 Council Retreat

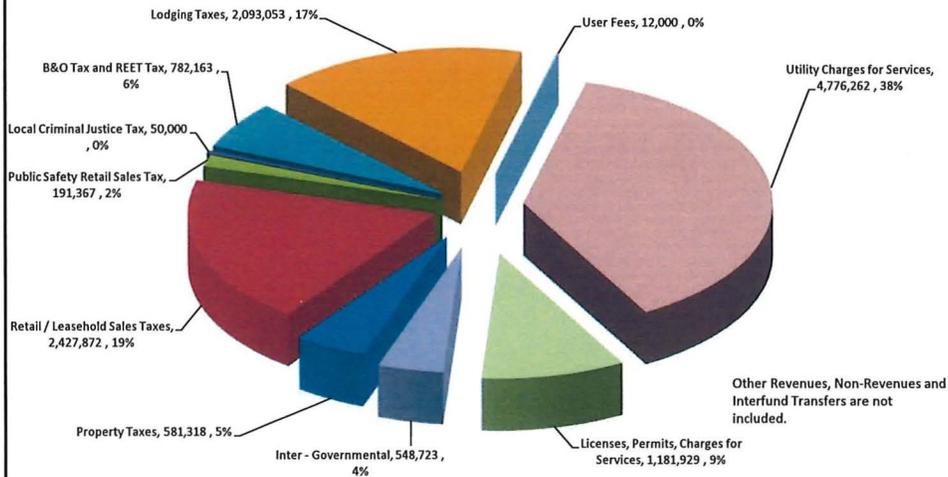
Revenue & Expenses

Where do they go and how do we spend them?



Revenue Sources

2020 Original Budget





Revenue Distribution by Fund

2020 Original Budget – Funds with Direct Revenues Only – No Transfers

Fund	Property Taxes	Retail Sales Taxes	Public Safety Retail Sales Tax	Local Criminal Justice Tax	B&O Tax and REET Tax	Lodging Taxes	User Fees	Utility Charges for Services	Licenses, Permits, Charges for Services	Inter - Governmental
Current Expense (General)	581,318	1,060,354	191,367	50,000	652,163				277,700	69,441
Street		867,561								47,981
Trans. Benefit District		499,958								
Lodging Tax						2,093,053				
PW Cap Improv.					130,000					
Leav. Civic Center									143,552	
Pool	131,850								101,000	
Garbage								829,474		
Water							6,000	1,582,680		
Sewer							6,000	1,626,181		300,000
Stormwater								116,246		750
Parking								621,681		
Cemetery Endow.									7,000	
Totals	713,168	2,427,873	191,367	50,000	782,163	2,093,053	12,000	4,776,262	529,252	418,172
% of Total	5.9	20.2	1.6	>1	6.5	17.5	>1	40	4.4	3.5

COVID-19 Impacts

- When will it end? Too early to tell.
- Current Estimated Losses through 2020 based on 2019 final revenues:
 - Base Retail Sales \$379,666 20%
 - Better Due to Construction / Online Sales
 - Lodging Tax \$965,000 40%
 - Parking \$226,365 34%



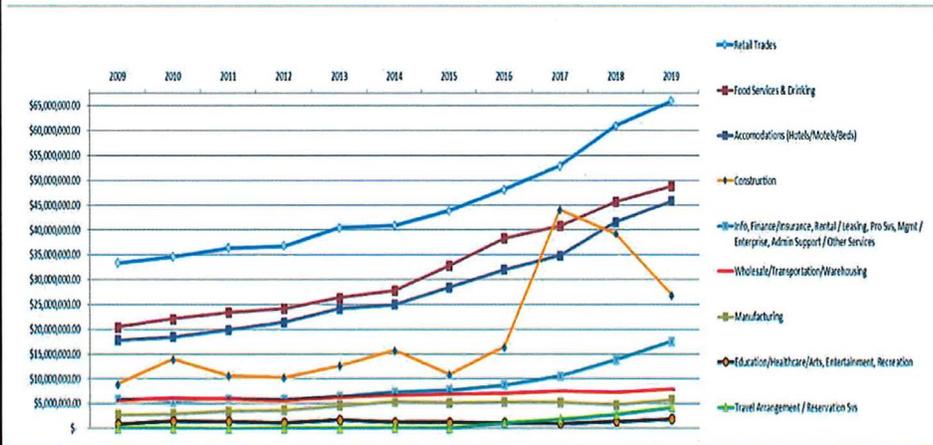
SALES TAX REVENUE

THRU JUNE 2020 – 2 MONTH REPORTING DELAY



Retail Sales Tax Breakout

6-Month Reporting Delay



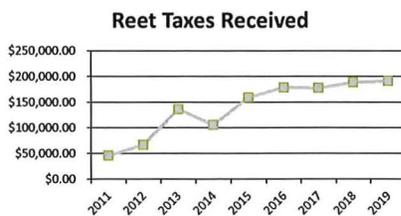
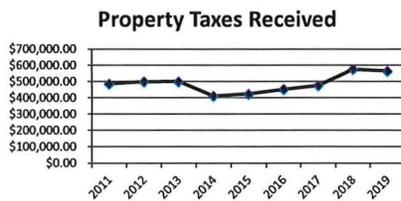


Sales Tax – Make-up

- ❑ 8.5% Current Retail Sales Tax.
- ❑ City Share of General Sales Tax .85%.
- ❑ Plus .2% for TBD (Trans. Benefit District 2010).
- ❑ Plus .1% Public Safety 2014 (85% to City, 15% to County).
- ❑ Others: 6.5% State, .15% Chelan County, .5% LINK, .1% Juvenile Detention, .1% 911 Center.
- ❑ 2021 – 8.6% with additional increase of .1% LINK.



Property Tax REET (Real Estate Excise Tax)

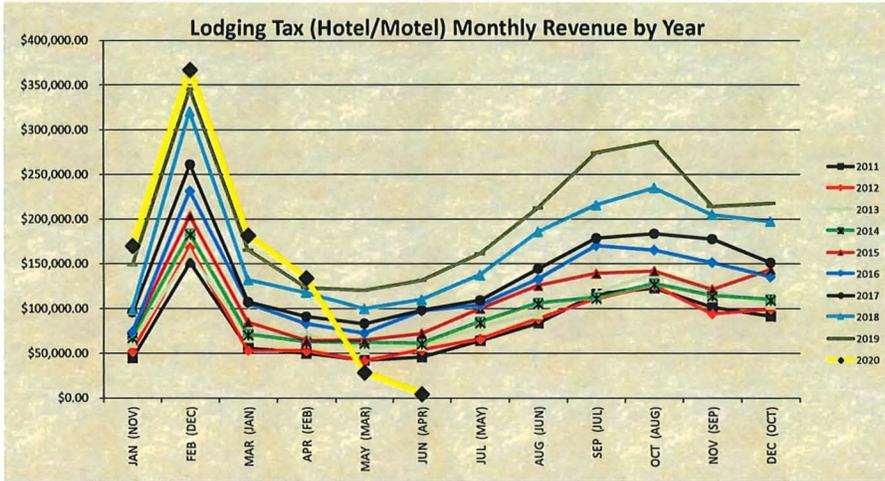


- ❑ Property Tax 1% annual maximum increase.
- ❑ Banked Capacity taken; full collections in 2020.
- ❑ Increase assessed values and new construction lowers rates.
- ❑ 2nd Q REET increase initiated in 2007, Street/Utility expenditure limitations.



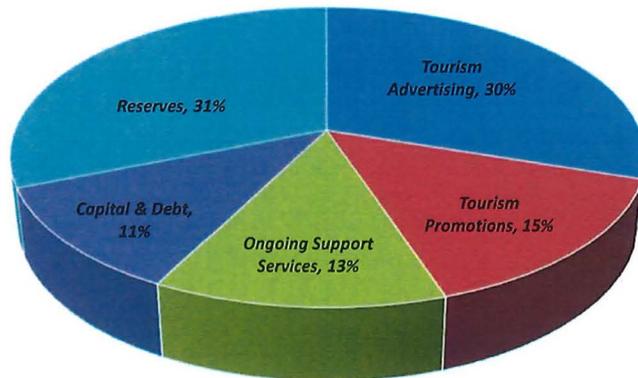
LODGING TAX REVENUES

THRU JUNE 2020 – 2 MONTH REPORTING DELAY



LODGING TAX EXPENSES 2015-2019

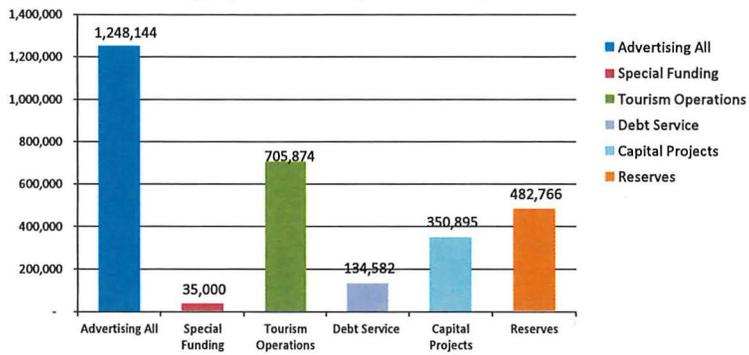
5 Year Average Lodging Tax Allocations



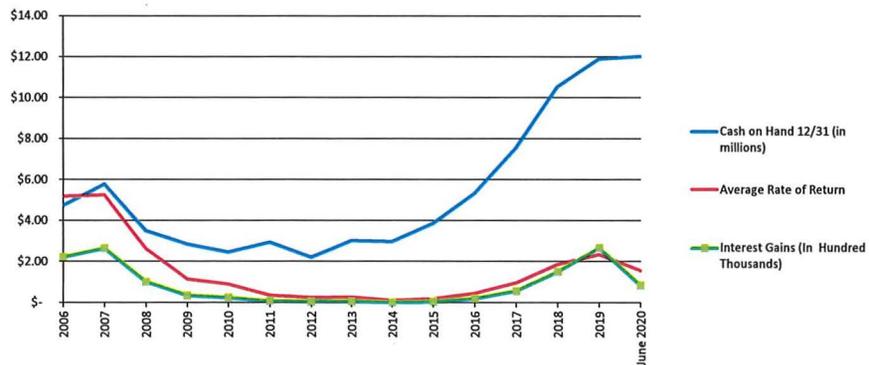


LODGING TAX EXPENSES 2020

Lodging Tax 2020 Expenses Groups Combined



CURRENT POSITION: INTEREST INCOME \$268K TO \$86K



Parking Revenues

THRU JUNE 2020



- Initiated in 2012.
- Average Debt Service \$185,000 for 20 years (ends 2033) Parking Utility similar to other utilities on rules regarding expenditures.

	Budget	Budget	Budget	Budget	Budget	Budget
	\$348,000.00	\$371,800.00	\$473,357.00	\$561,189.00	\$607,360.00	\$447,290.00
		6.84% Inc	27.31% Inc	18.56% Inc	8.23% Inc	-26.36% Dec
Actuals	2015	2016	2017	2018	2019	2020
TOTAL P 1-3 Lots	\$215,690.02	\$294,150.09	\$357,091.64	\$440,308.89	\$456,997.84	\$96,489.78
TOTAL P 4 Lot	\$79,692.00	\$103,051.25	\$104,040.25	\$121,109.00	\$119,041.75	\$36,662.50
TOTAL Lease Revenues	\$53,899.28	\$54,253.76	\$53,899.28	\$54,253.76	\$53,544.80	\$2,481.36
Lease Reserved	\$0.00	\$0.00	\$0.00	\$0.00	\$10,040.00	\$6,660.00
Parking Violations	\$10,772.76	\$21,342.46	\$18,558.35	\$16,990.65	\$14,737.42	\$6,122.73
Interest Income	\$106.85	\$1,064.26	\$3,847.89	\$9,132.37	\$19,293.34	\$4,494.48
GRAND TOTAL ACTUAL	\$360,160.91	\$473,861.82	\$537,437.41	\$641,794.67	\$673,655.15	\$152,910.85



Utility Revenues

Sewer/Water/Garbage/Stormwater/Parking

- Rate Basis – Rate structure for utility should cover the cost of providing that service.
- Cost of providing service includes operations, infrastructure replacement, and required improvements.
- Rate should be reviewed to ensure “fairness factor” different user groups are paying for the % of services they require and justification for rates being charged.
- 2017 Rate Study recommendations implemented for 2018 – 2022; Parking special each year by resolution.



Utility Expenditures

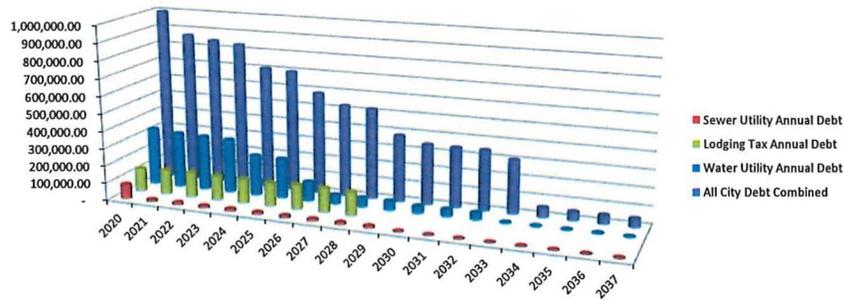
Sewer/Water/Garbage/Stormwater/Parking

- ❑ Sewer: Upgrade and Expansion \$11 M for Plant / \$8.5 M for collection system. New Plant online by 2020
- ❑ Water: New “water rights”, deferred maintenance at plant and reservoirs, new intake screens underway. Future water projects need planning, design and funding secured.
- ❑ Garbage disposal costs and service levels are factors pressuring increased rates now that residential is with Waste Mgmt.
- ❑ Parking: Study is identifying future “Parking” projects: Timed Parking Downtown, DOT Property Improvements, Parking Garage, Assistance with LINK Shuttle Services.



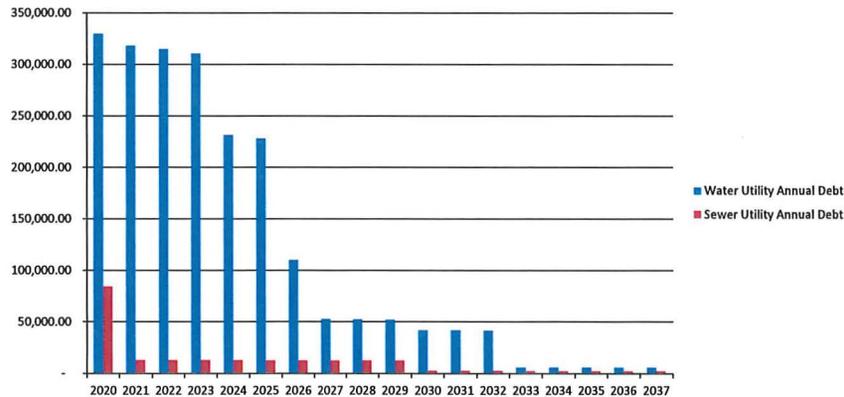
Bonding and Debt Retirement

Leavenworth Debt Retirement Schedule 2020 - 2037



Utility Debt Service Schedule

Water & Sewer Utility Annual Debt





Bonding A+ to AA in 2017

Rating Grades and Net Borrowing Cost %
As of 3/22/2017

S&P Rating Grades	Estimated Net Borrowing Cost %
AA	3.00%
AA-	3.07%
A+	3.14%
A	3.21%
A-	3.28%
BBB+	3.35%
BBB	3.42%
BBB-	3.49%
BB+	3.56%
BB	3.63%

In comparing a AA rating to a BB rating, a \$5 M bond paid over 20 years, the resulting savings for taxpayers is \$330,750

**Preliminary and subject to change, for demonstration purposes, Assumes a 20-year financing with General Obligation Bonds.*

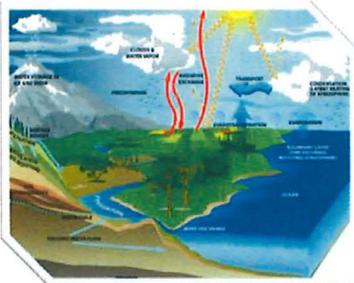
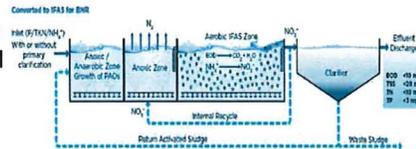


2020-21 Utilities



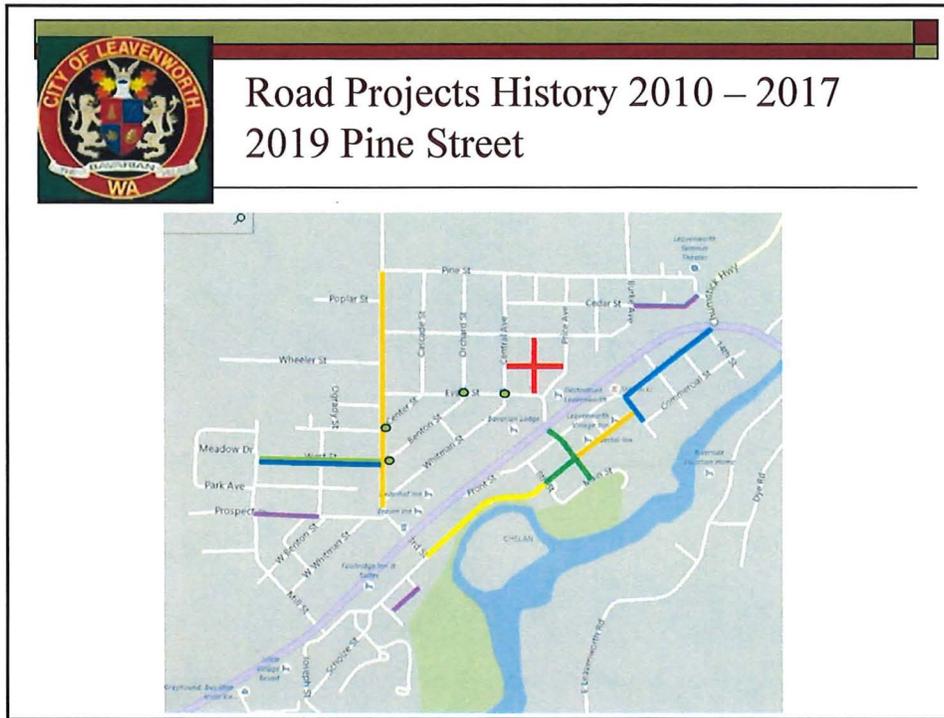
Waste Treatment Plant Improvements

- ✓ Biological Phosphorous Removal
- ✓ Final Tertiary Treatment Type
- ✓ Other Site Development issues



Water Plant / Main Line Improvements

- ✓ Water Plant Assessment
- ✓ Water Intake Screen Improvements
- Water Meters
- Water Plant Improvements
- Water Main Line Replacements



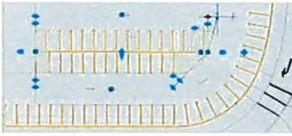
-
- 2020-2021 Road Projects**
- ❑ Finish and closeout Pine Street and Hwy 2 Crosswalk Grants
 - ❑ 2020 TIB Whitman Pilot Project – \$140,000 - \$300,000 - 95% TIB Funded / 5% CTBD
 - ❑ 2021 TIB 14th Street - \$514,100 – 95% TIB / 5% CTBD
 - ❑ 2020 – 2021 Consideration for smaller residential street overlays or patching projects / Pine Street Phase II



Parking



- ✓ Parking Management Study
- ✓ Use of current parking resources and economic feasibility of parking garage by Committee
- Other parking management alternatives, traffic flow management, LINK Shuttle, Event Parking
- Implementation of Parking Strategies
- \$600K Parking / \$200K Lodging Tax ?





Housing Affordability

- ✓ Mayor’s Taskforce Recommendations – Action Plan
- Planning Commission Review and Recommendations on Code Changes
- Private Sector Development - Creating additional Housing Choices and Capacity:
 - Additional Homes Pinegrass Development
 - Weidner Apartment Complex
 - Other – Four-Plexes/Duplexes/ADU’s






Overnight Rental Enforcement:



- Public Education Program
- Overnight Rental Complaint Line
 - 509-436-7630
- Pacific Security Investigation
- Undercover and Surveillance
- Enforcement Action

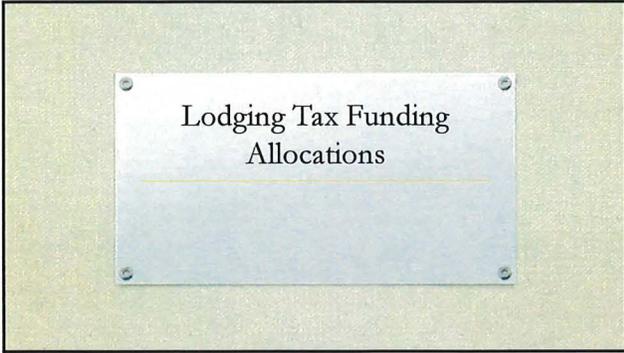


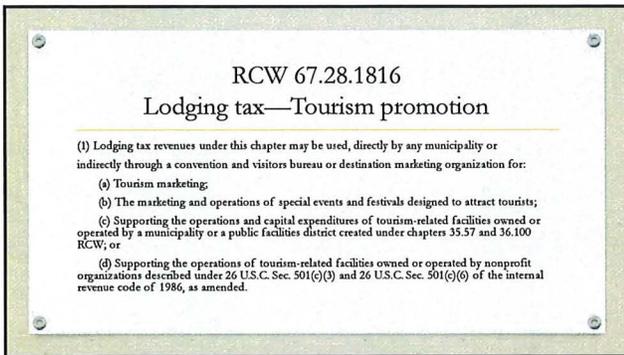
Other Initiatives and Projects Underway or on the Horizon

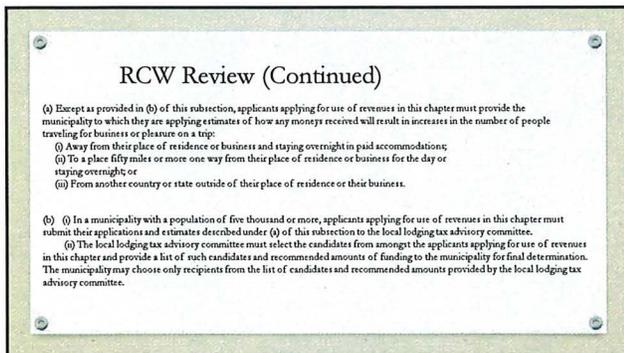
- **Survive COVID-19!**
 - PRSA Community Needs Assessment – Funding?
 - Industrial Snowblower - \$160K GF/ST/LT/Parking – Contract Renewal or Ending?
 - City Hall / Park Improvements ~ \$100K
 - Riverbend Intersection Study - \$15K
 - Front Street Restroom Expansion – Funding TBD
 - Downtown Master Plan – Next Projects
 - Arts District ?
 - Ice Rink / Hockey – P1 November 2020 - March 2021 ?
- **Eastside City Services Relocation**



Comments & Questions







Definitions

- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a useful life of three or more years, or constructed with volunteer labor that is: (a) owned by a public entity; (b) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (c) owned by a business organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (d) used to support tourism, performing arts, or to accommodate tourist activities.

Lodging Tax Allocation Process

Option 1 – Voluntarily comply with State Law. All lodging tax funds are provided to the Lodging Tax Advisory Committee (LTAC). LTAC makes decisions on expenditures with Council affirming budget recommendations.

- Council establishes LTAC
- Reviews approved by law
- Hands off approach to expenditures

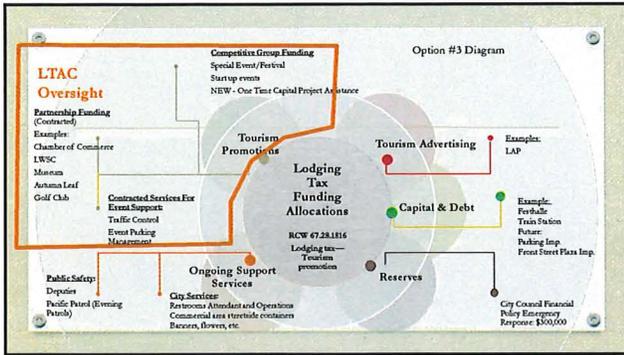
Option 2 – City Council allocates all Lodging Tax expenditures. City Council operates as a "LTAC" regarding lodging tax expenditures.

- Similar to current City process
- Recommend development of a Lodging Tax Policy to outline the allocation and awarding of funds for various purposes and/or groups
- Council remains in the forefront

Lodging Tax Allocation Process (Continued)

Option 3 – Hybrid option. The City Council forms an LTAC to oversee Tourism Promotions Funding. City Council retains direct oversight over large capital improvements, funding for ongoing support services, annual funding allocation to LAF, and expenditure of reserves.

- Council establishes LTAC, review and approval of bylaws (membership, terms, purpose)
- Council would allocate dollar amount of annual funding to LTAC
- LTAC would establish competitive funding process, Partner Funding Contracts, Special event support
- City Council would review and approve annual expenditures and funding results as part of the budget process.



Lodging Tax Allocation Process (Continued)

Option 4 - Continue on with current process. The current process has been successful at generating revenues for the Lodging Tax Fund.

- There is not a clearly identified separate Lodging Tax Policy which identifies any allocation procedure - Procedures were made by Council in 2019 and events were made, 2020 first run out with applicants/partners
- Current allocation process is part of the City Budget Process, which is clearly identified and audited on a annual basis
- Those not involved with it find the allocation process murky - Changes made in 2019 have cleared up some mistakes but the process remains with a need to fine tune on the application and scoring criteria - Council is scheduled to review the Group Funding Application / Scoring Process and Partnership Funding Application / Scoring Process and Contract Reservations in September if programs will be funded for 2021 - possibility of canceling new events due to COVID-19 revenue fund losses. Council may wish to help move forward 2020 events that were postponed.

Lodging Tax Allocation Process (Continued)

- Other Suggested Options?**
 - Must be legal
 - Should be Understandable
 - Simple Application - Too long, condense further
 - Required Reporting
 - Defined Scoring - Some questions were removed when found irrelevant

Competitive Awards Application Development

- Identify type of request
- Stated purpose and/or goal
- Define success measurements
- Reported outcomes and measurements in compliance with RCW 67.28.1816
- Report to City Council or LTAC required prior to amended or new funding
- Identified criteria for scoring and awarding funding

Example of Scoring Criteria

Can be set by City Council or LTAC or a mix Council/LTAC

- | | |
|--|-------------|
| • New Event, Ongoing Event: | Point Award |
| • Capital or Event or Service | Point Award |
| • Number of visitors: | Point Award |
| • Time of year or day of the week: | Point Award |
| • Alignment with Council or LTAC stated Goal | Point Award |
| • Impact on City Services | Point Award |
| • Enhancement of Visitor Experience (Fit with Theme) | Point Award |

Discussion?

- Next Step – Council starts review of process at September 8, 2020 Study Session – Economic Development Committee to Review.

Mayor & Councilmember
handbook



Mayor & Councilmember handbook



MRSC Report No. 44
Revised August 2019

Mayor & Councilmember Handbook

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Introduction

This handbook is intended to serve as a reference guide for mayors and councilmembers in Washington cities and towns operating under the mayor-council form of government. There are, however, materials on issues that also directly concern mayors in council-manager cities and all mayor pro tems: presiding over council meetings, conducting public hearings, etc.

A mayor wears many hats. As the chief executive officer of the city you will deal with human resources, contracts, budgeting, labor relations, and a host of other issues. When chairing council meetings and public hearings, or when dealing with the press, you will have to choose your words carefully, deciding when is the appropriate time to be tactful or more direct.

It's no wonder that mayors and councilmembers often feel overworked and underpaid! Those who come to the job without having substantial experience in city government have a lot to learn. We hope this publication serves as both a basic primer on the role of a mayor and councilmember, and also a resource with answers to some frequent problems.

Use this publication to learn how to get information, assistance and advice. When your questions are not answered by the text, it will hopefully guide you to either the relevant statutes and publications, or to those people who can best answer your questions.

Being an effective leader is not something that just magically happens when you are elected to office. Leadership skills must be learned. You need to listen to the residents of the city and the council, develop goals, and then work effectively with the council to achieve your objectives. There are a lot of people counting on you. They want you to succeed and so do we. Good luck!

Note: Unless the context or the references specifically indicate otherwise, the use of the term "city" or "cities" in this publication is meant to include "town" or "towns."

Remember – when you have a particular problem, chances are somebody else has already dealt with the same issue.

Know your form of government

It is important to know your city's classification. Also important are the different forms (sometimes called "plans") of government in Washington: mayor-council, council-manager, and commission. This section explains some of the basics. The city clerk can tell you your city's classification.

Almost all cities have an elected official with the title of "mayor," but the authority of the mayor depends upon the form of the government. Mayors in mayor-council cities are sometimes referred to as "strong mayors" because they have considerably more authority than mayors in council-manager cities. The distinction is explained on page 5.

City classification

City and town governments in Washington are classified according to their population at the time of organization (usually incorporation) or reorganization. There are four basic classifications for municipalities in the State of Washington: first class cities, second class cities, towns, and code cities.

Although some of the state laws (statutes) are the same for all classes of cities, many of the laws are different. State laws are located in different chapters of the Revised Code of Washington. The Revised Code of Washington (RCW) is the compilation of the laws passed by the state Legislature. "Statutes" are the laws contained in the RCW.

In 1890, the Legislature established four classes of municipal corporations: first, second, and third class cities, and fourth class municipalities, known as towns.¹ However, in 1994 the Legislature eliminated the third class city classification and those cities automatically became second class cities. Reference to fourth class municipalities was also dropped – they are now referred to exclusively as towns. An additional classification, the optional municipal code city, was provided in 1967.²

4 classes of cities

- First class cities
- Second class cities
- Towns
- Code cities

¹ First Class Cities: RCW 35.22; Second Class Cities: RCW 35.23; Third Class Cities: formerly RCW 35.24; Fourth Class Towns: RCW 35.27.

² Optional Municipal Code Cities: RCW 35A Optional Municipal Code

What difference does it make?

Depending on the city classification, there are some important differences with respect to the power and authority of the city government. Some of the differences are highlighted in this chapter. Note: See Appendix 1 for details regarding the specific powers and responsibilities of a mayor by city classification. This will be an important reference to make decisions and then take action in the days ahead.

Optional municipal code

The optional municipal code, Title 35A RCW, was devised in 1967 as an alternative to the existing statutory system of municipal government in Washington. The basic objective of the code was to increase the abilities of cities to cope with complex urban problems by providing broad statutory home rule authority in matters of local concern to all municipalities, regardless of population.

Cities operating under the optional municipal code are commonly referred to as code cities.

Under the optional municipal code, cities may take any action on matters of local concern so long as that action is neither prohibited by the Washington State Constitution nor in conflict with the general law of the state. The powers granted to code cities include all the powers granted to any other class of city in any existing or future legislative enactment, unless the Legislature specifically makes a statute inapplicable to code cities.

Charter cities

The Washington State Constitution provides that cities and towns with a population of 10,000 or more can frame a charter for their own government, subject to all the general laws of the state.³ All of the 10 first class cities have charters at this time. Only one code city, Kelso, has adopted a charter.

³ Constitution, Article XI, Section 10, as amended by Amendment 40.

Forms of municipal government

There are three basic forms of municipal government in Washington: mayor-council, council-manager (also known as the city manager plan), and commission form. Sometimes the “form” of government is also referred to as the “plan of government” or “organization.” (See Appendix 1 for more details on the mayor’s powers in each form of government.)

Mayor-council form of government⁴

In the mayor-council form, policy and administration are separated. All legislative and policymaking powers are vested in the city council. The administrative authority, including a veto power (except in towns), is vested in the mayor.

Council-manager form of government

All legislative and policymaking powers are vested in the city council. The council employs a professionally-trained public administrator, the city manager, to carry out the policies it develops. The city manager is the head of the administrative branch of city government. By statute, the mayor is selected by the city council from among its members, although this may also be done by election.

The mayor’s responsibilities are primarily to preside at council meetings, and act as head of the city for ceremonial purposes and for purposes of military law. The mayor votes as a councilmember and does not have any veto power (RCW 35.18.190; RCW 35A.13.030-.033 Optional Municipal Code cities).

Commission form of government

The commission form gives one elective body combined authority over the executive and legislative functions of municipal government. The commissioners, sitting as a body, are authorized to determine by ordinance the powers and duties of all officers and employees of each department. Each commissioner administers a separate department. The mayor has essentially the same powers as other members of the commission. The mayor has no veto power or any power to direct general city administration other than in their own department (RCW 35.17). Currently, there are no cities that operate under the commission form of government.

3 forms of government

- Mayor-council
- Council-manager
- Commission

⁴First, second class cities, and towns: laws governing the mayor-council plan are found in the respective RCW chapters for each class of city: RCW 35.22, RCW 35.23, and RCW 35.27. Optional Municipal Code cities: RCW 35A.12.

Additional resources:

Washington City & Town Officials Directory Mobile App, MRSC

Code City Handbook, MRSC

Change in classification or form of government

The classification of a city or town can be changed. Cities and towns have the power to advance their classification when the population increases sufficiently and there is an election (RCW 35.06). A city or town with at least 10,000 inhabitants may become a first class city by adopting a charter. A town with at least 1,500 inhabitants may become a second class city (RCW 35.06.010).

Any incorporated city or town may become a noncharter code city by following the procedures in RCW 35A.02.

Any city may also change its form of government. In general, the procedure may be initiated either by a resolution adopted by the city council or by a petition process, both followed by an election.

Washington cities classification & form of government summary*

Class	Mayor-council	Council-manager	Commission	Total
First	6	4	0	10
Second	5	0	0	5
Town	68	0	0	68
Code	147	50	0	197
Unclassified	1	0	0	1
Total	227	54	0	281

*As of August 2019

See MRSC's *Washington City & Town Officials Directory Mobile App* for specific data on each city, its population, classification, and form of government.

Getting started

By their action at the polls, the people of your community have given you a vote of confidence and expressed faith in your ability to act in their best interest. And you don't want to let them down. But as the election campaign fades in your memory, the magnitude of your new job begins to sink in. Whether you come to this job after years of service to the city or were elected with no prior background in city government, there's still a lot to learn.

As a new mayor or councilmember, you have a lot to learn about providing leadership and governing. But don't take yourself or the business of government so seriously that you don't enjoy it. It should be a fun and rewarding experience.

Your first days on the job

The role of mayor varies greatly from city to city, depending on the form of government, history, and level of involvement. Some new mayors are overwhelmed by the amount of administrative work that their job entails. Many councilmembers also feel overwhelmed by everything they need to learn and are sometimes surprised to discover that there are limits on their role in making decisions and setting city policy.

What is clear, however, is that it is a very big job. Here are some tips for getting started.

Getting oriented

First on the agenda should be a thorough orientation session – a broad overview of the functions of the city to include finance, public works, public safety and other departments. The mayor or city manager will want to arrange time to sit down with your clerk and key department heads. Take this opportunity to learn all you can about your city, its history, its operation, and its financing.

Your orientation should also include a tour of the physical facilities of the city. A firsthand inspection is often the best way to acquaint yourself with the city's operations.

“When the burdens of the presidency seem unusually heavy, I always remind myself it could be worse. I could be a mayor.”

– Lyndon B. Johnson

Keeping some perspective

- **Pace yourself.** Recognize that life – and the city – is dependent on a lot of things over which we have little control. Set some priorities, recognize the need to spend time with your family, and don't burn yourself out.
- **Develop a thick skin.** Remember that they don't dislike you personally, they just don't like your ideas.

Keeping some perspective ...

- **The job of mayor** is a unique combination of stress and joy.
- **Nurture your personal life.** Cutting back on family hours won't make you a better mayor.
- **Be yourself.** Don't try to be something you are not.

Review key documents

The following is a list of key city documents you will want to review. Ask your clerk or other staff if they exist and to help you locate them. Also, ask them to suggest other useful documents.

- Current operating and capital budgets
- Information on key programs and services
- Comprehensive annual financial report
- Organizational chart, staff roster and phone list
- The organization's primary planning documents
- Map showing city boundaries, buildings and facilities
- Mission statement and goals
- Council rules/meeting procedures
- Meeting minutes for last twelve months
- Work program and significant staff reports from last twelve months
- Human resource policies and other administrative policies
- Facts about your city: population, form of government, incorporation date, number of employees, total budget, total debt, etc.
- List of governmental agencies providing services or impacting your organization
- Calendar of important events

Don't be afraid to ask questions. You are not expected to know all the answers immediately. The mayor will want to find out about council salaries and benefits, employee vacation and sick leave policies, purchasing procedures within departments, proposed development projects – anything you need to know for a better understanding of city operations and issues currently facing your community.

Legal restrictions

Keep in mind that your city's adopted ordinances, typically codified as your municipal code, must be followed until the council takes action to amend them. And that's just the beginning – the number of federal and state laws and regulations that also govern your actions can be mind-boggling! If you are unsure of your responsibilities or authority in certain areas, be sure to seek clarification from your city attorney.

Mayor's role in working with staff

Whether you can spend a lot of time at city hall, or have a full-time job in addition to your mayoral responsibilities, you'll soon come to depend heavily on your key administrative staff.

In almost all cities, the city clerk performs a multitude of tasks. This is particularly true in the smaller jurisdictions. A city administrator often oversees administration in larger cities.

Value and respect your staff

If your city is fortunate enough to have experienced staff, recognize these individuals as a valuable resource – don't take them for granted or casually replace them.

A good clerk and administrator can be your lifeline, helping you to fulfill your legal responsibilities and ensure that the city functions smoothly. Staff who have been with the city for some time have some valuable historical perspectives, and can help "fill in the gaps" for a new mayor.

Make sure your staff are well trained and keep up in their field – encourage your clerk (and/or administrator) to attend training sessions and professional meetings of their peers. These sessions are well worth the investment – staff can learn from their peers around the state, avoid reinventing the wheel, and share challenges and solutions.

Resist the urge to drastically change the organization before you know how it really works. Many of your city's policies have evolved over the years through trial and error. While some methods may appear to need an immediate overhaul, it pays to watch the operation for a while before trying new methods. Don't seek change simply to do things differently!

Give yourself at least six months to learn the fundamentals of the task you have undertaken. Many potentially-fine public servants have come to an unhappy ending because of errors in judgment they made by being overly aggressive during those first six months. Even if you come to the mayor's job with many years of service on the council, you will find there is still a lot to learn.

Public and private sector differences

A word of caution: You may have run for office with the pledge to "run the city more like a business." While there are certainly similarities, there are some important differences between the public and private sectors that will become apparent as you get used to your new role.

Here are just a few of those differences:

- Much of your work will be done in the public eye. Consequently, things may move more slowly and take more time. All deliberations of council are done in public meetings and most public records are available to anyone.
- City revenues are limited by laws. You can only raise taxes so high, so you can't always pass on the costs directly to the consumer.
- There are more unions in the public sector. Salaries are often compared to employees in other cities. It is common for employees to expect an annual cost of living increase.
- Public employees have different constitutional rights and more legal protections. With additional laws governing your actions as an employer, you can expect more grievances, claims and litigation.
- Some things that you may just consider "good business sense" could run afoul of our state constitution's prohibition against "gifts of public funds." (See Article VIII, § 7 of the state constitution.)
- Public works projects and contracting often must go through a public bidding process. This takes more time and sometimes costs more.

Practical advice

Helpful pointers from other elected officials.

Initial words of wisdom ...

- **Listen.** Listen to everyone. Listen until your ears fall off. Soak it up. After six months in office, you will round out the picture of the complexities of city government and your role.
 - **Carry a notebook around for the first six months and write everything down.**
 - **Don't be afraid to say, "I don't know."**
 - **Don't make promises you can't deliver!** Most major decisions and actions require approval of the council.
 - **Gear your mind to process a tremendous amount of seemingly conflicting information.**
 - **Don't enter office with an unmovable set agenda.** Learn as much as possible before taking on a major program or effort. Don't be strangled by campaign promises that were made without sufficient information.
 - **If you come on board as a big critic of the "way things have been done,"** you may be surprised to find how hard the job really is. You'll soon gain better appreciation for those who came before you.
 - **The job can be very complex.** Try to stay focused on the big issues.
-

Mayors will want to...

- **Meet with each department head separately.** Learn all you can. Spend time with the previous mayor, if feasible.
- **Ask for help when you need it.** Don't be afraid to use outside resources (your attorney, AWC, MRSC, a neighboring city or county).
- **Don't be intimidated by larger cities.** Bigger cities have many of the same problems and may be willing to lend expertise or staff resources.
- **Network with others in the same boat.** Have monthly lunches with mayors from neighboring communities. They can provide support, new ideas, and give you an opportunity to vent.
- **Find an experienced mentor from another city.** Ask for advice when you need help. You'll get empathy and a clearer vision from someone who has been there.
- **Ask opinions, and listen.** Spend time with those individuals who have different opinions than yours (maybe even your opponent in the election). Listen, don't argue the points, then rethink your positions.
- **Don't reinvent the wheel.** Someone has probably done it elsewhere. Use information available from MRSC and AWC. Attend workshops and conferences, especially the AWC Annual Conference.

The mayor's leadership role

The mayor occupies the highest elective office in the municipal government, and is expected to provide the leadership necessary to keep the city moving in the proper direction. Effective mayors see themselves not only as leaders staking out policy positions, but also as facilitators of effective teamwork.

As a mayor, you have a special set of long-term responsibilities not shared by many others. You are supposed to be a community leader and a political leader. Yet most of the trials and tribulations you will face during your term of office will deal with city housekeeping. These day-to-day activities are of immediate concern to most residents, and sometimes solving the little problems are the most fun.

But you need to find time to deal with the important policy issues and some of the long-term future concerns. Try to make your city a better place to live tomorrow, not just today.

If you can leave something of long-term consequence to improve your community, you will at least have the satisfaction of a job well done, and that is the principle reward of public service.

Setting goals

The role of the city council in cities of all sizes is becoming more demanding and complex. In order to get anything accomplished, elected officials must work together to define and agree upon mutual goals. This is one of the most challenging aspects of being a mayor and working with a city council.

Goal setting provides a framework for city action. By setting short-term and long-term goals, and then deciding which are most important, you and the council can define what your city government will try to achieve. Staff then have clear guidelines regarding what you and the council want to accomplish, and you have a way of evaluating your programs and services.

Establishing goals will keep you on track and minimize distraction from the brush fires.

Some cities plan goals through council retreats. Some use outside facilitators to assist with this process.

See if you can develop a

vision of what your city

should look like in the future,

and work with others to that

end.

Additional resource:

Center for Government
Innovation, Washington State
Auditor's Office

A simple goal setting process

The basic idea is to start with the big picture and work to ensure that your day-to-day tasks relate back to that big picture. Periodically, you'll want to look back at your goals and evaluate what you've accomplished, and decide what changes you want to make, if any.

Step 1. Identify issues and needs

Before you can set goals, you have to come to some agreement on what needs to be done. As a group, come up with an overall list of issues and needs, including councilmembers' ideas and residents' concerns. Narrow down that list to a workable number of problems and needs to be addressed.

Step 2. Set goals

Once you've developed a focused list of needs or problems, describe what you hope to do to eliminate each problem or meet each need. The goals you express may be both community goals and goals for your particular governing body to accomplish.

Step 3. Set objectives

Objectives are the specific short-term strategies to meet your goals. They are statements of accomplishments to reach within a specific time frame. By setting objectives, the council can focus on a series of realistic goals and can then determine the resources needed to accomplish them.

Step 4. Set priorities

Setting priorities is the most important step in the goal-setting process. Comprehensive goal setting results in more objectives to accomplish than is possible in the time available, so you've got to set priorities. Decide what areas need attention now and which ones can be delayed. A simple rating and ranking exercise can help you determine which areas are of highest concern.

Step 5. Start an action program

Once you've decided on goal priorities, work with staff to develop specific programs and timelines to meet your goals.

Step 6. Evaluate the results

You'll want to establish a formal process for evaluating goal progress. Are you reaching them? Are they still appropriate? Do any need to be dropped or altered?

Some of the mayor's leadership roles

Ceremonial role

The mayor's participation in local ceremonial events is a never-ending responsibility. On a daily basis, the mayor is expected to cut ribbons at ceremonies to open new businesses, break ground for construction of new city facilities, and regularly appear at fairs, parades, and other community celebrations. The mayor also issues proclamations for a variety of purposes. As featured speaker before professional clubs, school assemblies, and neighborhood groups, the mayor can expect to be interviewed, photographed, and otherwise placed on extensive public display by the media.

Intergovernmental relations

Your city does not operate in a vacuum. Cities must work within a complex intergovernmental system. Keep in contact and cooperate with your federal, state, county, and school officials. Get to know the officials of neighboring and similarly-sized cities.

Mayors take the lead in representing their local government to those from outside the community who are interested in joint ventures – including other local governments, regional organizations, and federal and state government representatives. In this area, mayors promote a favorable image of their local government and pursue resources that will benefit the community.

Public relations

Mayors inform the public, the media, and staff about issues affecting the community. This role is critical in building public support and facilitating effective decision-making by the council.

Working with residents

The most important trait a new official can cultivate is the simple ability to listen. You will quickly find that when frustrated city residents call on you to complain, they do not come to listen – they come to talk. So let them.

Make an effort to keep your constituents informed, and encourage participation. Expect and respect complaints. Make sure your city has a way to effectively deal with them.

Sitting in your position of new responsibility does not allow you to forget the people who elected you to office. They expect you to keep them informed and to give them an opportunity to express themselves. If you do this, you will surely increase your chances for success as a public official.

Dealing with the media

The media is your best contact with the public – it informs the community about what is happening and why. A good working relationship is mutually beneficial to both you and the media. Through the media, you have the opportunity to comment publicly on local issues and inform residents of city activities. If you work hard to cultivate that relationship, you can ensure that the media have all the facts and provide accurate, fair coverage of city issues.

Public relations

- Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
- Don't give quick answers when you are not sure of the real answer. It may be embarrassing later on.

**“We’re busy electing
barometers, when what we
really need are compasses.”**

– Author unknown

Practical advice

Helpful pointers from other Washington mayors.

Leadership ...

- **Lead by example.** Be honest, consistent, and flexible. Don’t play games.
- **Use common sense.** If your heart, mind, and gut agree, then go for it.
- **Don’t get stampeded into action by the strong demands of special interest groups.** Your job is to find the entire community’s long-term public interest, and you may be hearing from a vocal minority.
- **Be clear on what you stand for.** List ten things you believe in.
- **A new mayor should have goals.** Make a list of things you want to accomplish. But don’t act rashly and assume that only you know the best way to accomplish things. Every issue will benefit from additional discussion. Your perceptions may change.
- **Sometimes we underestimate the potential impact of a mayor’s leadership.** Use the dignity of your office to help the community get past contentious issues.
- **There is a tremendous amount of discomfort in making very public decisions.** Sometimes the decisions feel like the end of the earth. It’s easy to fear the political consequences. But it is important to look a little more long-term in perspective, weigh everything, and reach good decisions.
- **Know that you won’t be able to satisfy everyone.** If you try, you won’t be able to demonstrate leadership. Listen fairly, listen thoughtfully, and then do what’s right.
- **Most of the easy decisions got made a long time ago.** Many decisions that need to be made can be very painful – but you can’t solve those big problems without pain.

The mayor as chief executive

Most people understand that the mayor is the chief executive of the city. When there is a serious emergency, such as a flood, residents properly assume that it is the mayor who has the authority to take charge. Unfortunately, it is also assumed by some mayors that their power is almost supreme, even in the absence of an emergency.

Though the mayor has executive authority in a mayor-council city, that authority is defined by state law and must be exercised in a manner consistent with policy decisions made by the city council. There are statutory limitations both on what you can do and how you can do certain things. Appendix 1 lists the specific statutes that grant powers and responsibilities to the mayor. This chapter provides an overview of your chief executive responsibilities.

Administrative/policy maker distinction

Again, it is the council's role to adopt policies for the city and it is the mayor's role to administer or carry out those policies. The distinction sounds simple, but it can cause confusion and animosity.

Though a mayor does not set policy, as the elected chief executive it is certainly appropriate for the mayor to bring policy options and recommendations to the council. That is part of the leadership role of the mayor. That leadership role is particularly evident in the budget process, where the mayor submits a preliminary budget to the council as a proposed guideline for city priorities.

So, who actually runs the city?

In many of the smaller towns and cities in Washington, the city clerk is the person at city hall who does a lot of the day-to-day administration of the city. The clerk's duties are established by state statutes and city ordinances – this person is typically in charge of administration when the mayor is not at city hall.

In many cities, the mayor is employed full-time in another job and does not have the time to be at city hall taking care of administrative details. The mayor's salary in most municipalities clearly indicates that the job is not full-time.

As cities grow and the complexities of city administration become more difficult for a part-time mayor and a city clerk to handle, some cities choose to create a new position titled "administrative assistant," "city administrator," or "executive assistant" to help with city administration, under the direction of the mayor. The individual in such a position is generally appointed by the mayor and performs tasks within the statutory authority of the mayor. The council can establish the qualifications and the duties of the position.

Only about a dozen Washington cities currently have full-time mayors, though a growing number of cities have individuals who work full-time as executive assistants to the mayor, as described above.

Some cities have chosen to change to a council-manager form of government when there is a consensus that a professional administrator could better handle the city administration. The decision of whether a city should have a professional city administrator or city manager is complex, involving politics, finances, and the views of the people.

Responding to resident complaints

Residents often contact the mayor when they have a problem, whether it involves a land use matter, a barking dog, or a pothole. Work with staff to resolve problems, keeping in mind that you are not the individual with all the answers.

For instance, as land use planning becomes more complex, don't be tempted to give a quick answer or promise to a landowner before checking with the city's planning department or reviewing the city's development regulations. Consider referring callers to the staff person with the expertise, then follow up to make sure the matter has been handled appropriately. If a matter is normally handled by the police department, direct the complainant to the police department.

City staff will appreciate your involvement if you make the proper referrals, and if you are careful to not make promises that are inconsistent with city procedures or policies.

If word gets out that complaining to the mayor gets a more prompt response to minor nuisance problems, you are bound to receive a lot of those calls. Did the people elect you to solve the barking-dog problem, or did they elect you to make sure that city staff properly handle these minor issues?

Relationship with the city attorney

In most cities, the mayor appoints the city attorney, whether that position is full-time or part-time. In some cities, the council takes an active role to arrange for the provision of legal services through a contract. Regardless of how the position is established, remember that although the mayor typically has more contact with the city attorney than the councilmembers or city staff, the city attorney's job is to advise all city officials. Sometimes councilmembers feel that the city attorney is the mayor's attorney, particularly if the city attorney generally supports the mayor's position in situations where the answer is unclear.

A mayor cannot prohibit the council from accessing the city attorney for advice. For financial reasons, the mayor may feel that questions to the city attorney should be channeled through the mayor, to avoid possible duplication and to make sure that the questions are presented clearly. Ultimately it is up to the council to establish procedures on how to provide city attorney services.

Some smaller cities try to minimize legal service fees by having the city attorney skip regular council meetings. That can be thrifty, but shortsighted, particularly when the council is dealing with controversial matters such as land development, or complex procedural issues such as local improvement districts.

Make your attorney's job easier

Inform the city attorney ahead of time when you see a legal issue brewing. No attorney wants to be asked a complex question at a council meeting without prior warning.

Instead of asking the city attorney without warning: "Can we do _____?", give your attorney time to research the issue and ask: "How can we do _____?". City attorneys often get frustrated by frequently informing the mayor and council that they cannot do something. They would rather use their creativity to come up with alternate ways to legally accomplish an objective.

The attorneys at MRSC are another good source of legal expertise. Please keep in mind that their advice is based on the facts you provide. Sometimes there are special factors involved, perhaps unique to your city. That is why MRSC will sometimes advise you to review an issue with your city attorney instead.

Public records disclosure

You are legally obligated to disclose city documents to the public upon request. For example, when there is a request from the public to disclose a city document, the city must respond to the disclosure request in writing within five working days. The short turnaround time requires that city staff have clear guidelines for how to process these requests. Most cities have adopted public disclosure procedures. If your city has not yet adopted public disclosure policies, consider making that recommendation to the council.

Many city records are exempt from disclosure, and there are even statutes that prohibit disclosure of some records. (See Appendix 3, Public records disclosure, for more details on what is disclosable.) The Open Government Trainings Act requires elected officials to receive training on public records, the Open Public Meetings Act (OPMA), and records retention within 90 days of taking office and every four years thereafter.

In partnership with MRSC, AWC provides the courses for free online. The eLearnings are available to watch anytime, and meet the Open Government Trainings Act requirement.

Emergency management

In mayor-council cities, the mayor is statutorily in charge when there is an emergency or disaster. RCW 38.52 contains the state statutes requiring that every city and town adopt an emergency management plan. Some cities choose to join with other cities or the county to create a joint emergency management agency. Together they select a director and grant them extensive authority to cope with an emergency.

The city clerk can provide you with a copy of your city's emergency management plan. Read it. Keep a copy readily available in both your office and at home. When a disaster happens, you may need to coordinate the emergency response. Depending on the emergency type and its duration, you may want to seek consultation or approval of the council for certain actions, if feasible. (See Appendix 1, Overview of statutes, for further discussion of emergency management.)

In any disciplinary action –

hasten slowly.

Personnel management

The statutes generally give the mayor or city manager, as chief executive, broad authority to hire and fire employees. (See Appendix 1, Overview of statutes.)

Realize, however, that employee lawsuits can be one of your largest areas of potential liability. There are legal limitations on the actions you take in hiring, discipline and discharge:

- **State and federal laws, court decisions** – Laws relating to anti-discrimination, overtime compensation, safety, sexual harassment, and many others.
- **The city's personnel policies** – Policies passed either as an ordinance or adopted as administrative policies.
- **Civil service** – Except for very small cities, most police and fire employees are protected by civil service. Some charter cities also provide civil service coverage for other city employees. Civil service governs hiring processes and provides hearings for disciplinary actions. Your actions may be subject to appeal to the local civil service commission (RCW 41.08 and 41.12).
- **Union contracts** – The terms of the labor contract prevail over other local regulations, including civil service rules and personnel rules. In many contracts, a grievance procedure provides for disciplinary appeals to an outside arbitrator.

Before you jump...

Prior to taking any serious disciplinary action, consult with your attorney. Your liability insurance carrier may also provide some preventative legal assistance.

Another tip is to have good and consistent personnel policies. Current and clearly-written policies help avoid lawsuits, promote consistency, and contribute to employee morale.

Labor relations

Unions have a significant presence in Washington cities. Most city employees have the right to organize under the state Collective Bargaining Act and have joined statewide unions or have formed local associations (RCW 41.56).

In particular, most police and fire departments are well-organized. Except for very small cities, police and fire are also subject to interest arbitration when an impasse in bargaining occurs. This can create a unique dynamic in police and fire negotiations.

Labor relations advice

- Know the terms of your labor contracts.
- You can't change wages, hours or working conditions without bargaining these issues with the union. This means you can't unilaterally implement a change in benefits, for example, without risking an unfair labor practice.
- You may or may not choose to be on the bargaining team. Be aware of the disadvantages – the process is very time-consuming and may affect your day-to-day relationships with employees. Because city employees are often your constituents, you may have unions putting political pressure on you. Some cities hire professional consultants to bargain on behalf of management.

Practical advice

Helpful pointers from other Washington mayors.

Working with staff ...

- **Hiring good people is what it's all about.** Get the best that you can. Take your time. It can be incredibly costly to undo a bad hiring decision.
- **Get to know staff.** Learn what they do.
- **Listen to your staff.** Give them as much responsibility as they can handle. Task your employees with the responsibility to create new ideas and better ways to get stuff done.
- **Keep perspective.** The people who helped get you elected may not always be the right people to help you run the city.
- **Say thank you!** Let folks know how much you appreciate them and give credit where credit is due.
- **Treat staff with respect.** They are a very valuable asset.
- **Be consistent.** Treat everyone the same.
- **Formalize your city's personnel rules and regulations.** Make sure the rules are clear.
- **Keep your employees informed.** Stay in touch with decision-makers on the front line and those who are in frequent contact with the people.
- **Budget money for and encourage your staff to attend professional meetings and seminars.** These learning opportunities and the personal contacts can be invaluable to your city.

The job of a councilmember

The principal job of a city or town council is to set policy. A policy is a course of action for a community. Policymaking often takes the form of passing ordinances or resolutions. After policy decisions are made by the legislative body, others perform the administrative task of implementing the policies. The distinction between formulation and implementation may not always be clear, necessitating open communication between legislators and administrators.

Adopting policy

The council does not make policy in a vacuum. Councils rely on ideas from many sources, including the council staff, community groups, advisory committees, chambers of commerce, and others. It is the council's responsibility to consider the merits of each idea and then approve, modify, or reject them. In doing so, councilmembers analyze community needs, program alternatives, and available resources. The decision often takes the form of an ordinance or resolution, although it may take the form of a rule, regulation, motion, or order. The budget and comprehensive plan are powerful policy tools that are adopted by ordinance.

So, who actually runs the city?

It is important to recognize that it is not the role of the councilmember to administer city affairs. The council sets policy, but it is either the mayor (in mayor-council cities), or the city manager (in council-manager cities), who actually implements the policies. This means that it is not the role of the councilmember to supervise city employees on-the-job or become involved in the day-to-day administration of city affairs. This can be a source of conflict between the executive and legislative branches of city government.

Responding to constituent complaints

Residents often contact a councilmember when they have a problem, whether it involves a land use matter, a barking dog, or a pothole. Don't hesitate to send them to the appropriate city staff person for resolution of their problems. Keep in mind that you lack the authority to take action in administrative matters.

Relationship with the city attorney

In most cities, the mayor appoints the city attorney, whether that position is full-time or part-time. In some cities the council takes an active role to arrange for the provision of legal services through a contract. Regardless of how the position is established, remember that although the mayor or city manager typically has more contact with the city attorney than the councilmembers or city staff, the city attorney's job is to advise all city officials. Sometimes councilmembers feel that the city attorney is the mayor's or manager's attorney, particularly if the city attorney generally supports the mayor's or manager's position in situations where the answer is unclear.

Question & answers

Q. What is the role of the city council regarding employee discipline, and what input can the council have concerning performance appraisals of employees?

A. Though the council may be concerned about employee discipline and how certain employees are performing their duties, the council should not be involved in any individual situations. While the council can establish personnel policies and voice their concerns to the mayor, it is solely the mayor's job to discipline and supervise city employees, including conducting performance evaluations.

Q. Is the mayor or city manager required to inform councilmembers prior to terminating or disciplining a city employee?

A. No. However, when a particular termination or discipline is likely to be controversial, the mayor may want to notify the council and explain the decision in an executive session. Disciplinary and termination decisions should be reviewed with the city attorney first. The mayor and councilmembers should be careful to not discuss specific cases outside of an executive session.

Neither the mayor nor the city manager can prohibit the council from accessing the city attorney for advice. For financial reasons, the mayor or manager may feel that questions to the city attorney should be channeled through the executive's office, to avoid possible duplication and to make sure that the questions are presented clearly. Ultimately, it is up to the council to establish procedures on how to provide city attorney services.

Some smaller cities try to minimize legal service fees by having the city attorney skip regular council meetings. That can be thrifty, but shortsighted, particularly when the council is dealing with controversial matters such as land development, or complex procedural issues such as LIDs.

Personnel management

The statutes generally give the mayor or city manager, as chief executive, the broad authority to hire and fire employees.

The city council, however, determines the number of employees that can be hired and those employees' duties. The council establishes salaries and other forms of compensation paid to city workers. The council may also establish job qualifications.

One piece of advice is to have good, consistent personnel policies. Up-to-date, clearly written policies help avoid lawsuits, promote consistency, and contribute to employee morale.

Labor relations

Unions have a significant presence in Washington cities. Most city employees have the right to organize under state law and have joined statewide unions or formed local associations. The city must negotiate labor contracts with these unions over wages, hours and working conditions.

In particular, most police and fire departments are unionized. Except for very small cities, police and fire unions have access to interest arbitration when an impasse in bargaining occurs. This can create a unique dynamic in police and fire negotiations, given the potential for an outside arbitrator to make decisions regarding wages, benefits and contract language.

Open government laws

Compliance with public disclosure and open meetings builds trust with your community. The Open Government Trainings Act requires elected officials to receive training on public disclosure, the Open Public Meetings Act (OPMA), and records retention within 90-days of taking office and every four years thereafter.

In partnership with MRSC, AWC provides the courses for free online. The eLearnings are available to watch anytime, and meet the Open Government Trainings Act requirement.

Local laws – ordinances and resolutions

How does the council adopt policy? Typically, a council will adopt policy by passing ordinances and resolutions at council meetings.

Difference between ordinances and resolutions

An ordinance is a local law of a municipal corporation, prescribing general rules of conduct. Ordinances are used for a variety of purposes, including administrative actions such as establishing offices and setting salaries, or they may be used for actions that control the conduct of the public. An ordinance is a legislative enactment, within its sphere, as much as an act of the state Legislature.

A resolution, on the other hand, is typically an act that is less solemn or formal than an ordinance. Consider it the official body's expression of opinion. Legislation must be enacted via ordinance. Deciding what constitutes legislation may require reference to case law, but the general guiding principle is that "[a]ctions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative..." (*Durocher v. King County*, 80 Wn.2d 139, 153, 492 P.2d 547, 1972).

When deciding whether to use an ordinance or a resolution, first refer to the city charter and state law (RCW). Some state statutes clearly define which action is needed, others leave it to the discretion of the legislative body. If the charter and the code are silent as to the mode of decision-making, and the action is not "legislation," then either a resolution or an ordinance may be used.

Rules for adopting ordinances

The state statutes for each class of municipality do contain some procedural requirements which govern the ordinance adoption. However, these procedural requirements are generally not complicated and do not require an elaborate adoption procedure. For a comprehensive discussion of adoption procedures, including information on requirements for signatures on ordinances and publication of ordinances, see *MRSC Local Ordinances for Washington Cities and Counties*.

Many cities and towns have adopted local rules of procedure that relate to the adoption of ordinances, and these, of course, must be followed. For example, although the state statutes do not require that an ordinance be read more than once (in most circumstances) prior to adoption, many local rules of procedure do contain such a requirement. Therefore, it is important that councilmembers familiarize themselves with the local rules of procedure, as well as the state statutory requirements in regard to adoption requirements for ordinances.

An ordinance is a local law of the city.

A resolution is typically an act that is less formal than an ordinance.

Practical advice

Helpful pointers from other elected officials.

Leadership ...

- **Lead by example.** Be honest, consistent, flexible. Don't play games.
- **Use common sense.**
- **Don't be stampeded.** You may receive strong demands from special interest groups. Your job is to find the long-term public interest of the entire community.
- **Be clear on what you stand for.** List 10 things you believe in.
- **A new councilmember should have goals.** These are things you want to accomplish. But don't act rashly and assume that only you know the best way to accomplish things. Every issue will benefit from additional discussion. Your perceptions may change.
- **Use your role as a leader.** The dignity of your office can help the community get past contentious issues.
- **It can be uncomfortable to make very public decisions.** Sometimes the decisions feel like the end of the earth. It's easy to fear the political consequences. But it is important to look a little more long-term in perspective, weigh everything, and reach good decisions.
- **Know that you can't satisfy everyone.** Listen fairly and thoughtfully, and then do what's right.

Working with staff ...

- **Get to know staff and what they do.**
- **Say thank you!** Let folks know how much you appreciate them and give credit where credit is due.
- **Treat staff with respect** – they are a very valuable asset.
- **Be consistent.** Treat everyone the same.
- **Budget money for and encourage your staff to attend professional meetings and seminars.** These learning opportunities and the personal contacts can be invaluable to your city.

Legislative advocacy

Many city officials don't realize just how much influence they have to help make changes at the state level. You are one of your legislator's constituents, and the experiences and city stories you share can yield positive results.

Use the time between legislative sessions (interim) to meet with your legislators. During the legislative session, you are lucky to have 15 minutes for a meeting, yet this is when most people try to talk to their legislators. Think differently! Schedule meetings with your legislator throughout the year, particularly during the interim. Once you have a meeting with your legislator, it's important that you make the most of it. Come prepared and consider the following:

- Brief legislators about your challenges and opportunities.
- Ask for monthly meetings or calls with your city, or a group of cities.
- Tell stories about real impacts on your constituents.
- Keep materials clear and concise. Cover 3-5 issues at most.
- Ask for clear commitments to work on your issues.
- Connect with legislative staff. They are often the subject matter experts for legislators.

Develop a legislative agenda

Tell your legislators what you want from them. You can do this simply and effectively by developing and sharing your city's legislative agenda. City councils can vote to take official positions on state issues that affect the city. A legislative agenda is a good way to get your legislator's attention and tell them your priorities.

- Keep it short and simple – one page only.
- Get your city council to adopt it in the fall, before session begins.
- Include capital needs along with policy priorities.
- Incorporate AWC's Legislative Priorities into your agenda.
- Make it public. Post it on your city's website, put it in your newsletters, and insert it into utility bills.
- Work with your local media for coverage.

Additional resources:

AWC's City Action Days Conference (every winter in Olympia)

Legislative Bulletin, provided weekly throughout the legislative session and monthly the rest of the year

Strong Cities Pocket Guide

PDC's *Public Agency Lobbying Handbook*

Public Disclosure Commission

Communicate with your constituents

If you aren't communicating with your constituents about how your legislative agenda is faring, then who is? You and your legislators have the same constituents. Make sure your shared constituents know how decisions made in Olympia affect them at home. This is a powerful way to create legislator accountability.

- It is your responsibility to tell the public how their legislators are supporting your community. No one else will do this.
- Communicate with your constituents through city council meetings, public access TV, social media, and newsletters.
- Use your influence with community groups to make sure they know the full story.

If you lobby, you may need to report to the PDC

Cities that conduct lobbying activities either through a contract lobbyist, directly with in-house staff, or with city councilmembers may need to report to the Public Disclosure Commission. Those that hire a contract lobbyist must file a report.

Cities that have in-house staff or elected officials who spend more than four days a quarter directly lobbying the Legislature may need to complete a report. For more information on reporting requirements and how to file, visit the PDC's website.

Cities that fail to comply with reporting requirements on lobbying activities may be subject to penalties from the PDC.

Budget basics

The budget is one of the city's strongest policymaking tools. Spending guidelines reflect numerous policy decisions. The budget message can give a clear view of city policy on many issues. It describes in narrative form significant items in the budget, financial trends, and the policy implications.

Setting policy through the budget is a continuous, yearlong process. It involves setting goals and establishing priorities. Public participation is critical to the budget process, and is required by law, because of the many policy decisions involved. Once a budget is adopted, the mayor or city manager is responsible for carrying out the budget and councilmembers are responsible for monitoring program progress through periodic reports from staff and from the community. If programs are not effectively implementing policy decisions, revisions can be made.

The three types of budgets:

- **Operating budget** – These funds are for delivering services like police, fire, parks and library. The operating budget enables you to set policy. When most people think about their city's budget, they're referring to the operating budget. The operating budget is financed from the city's ongoing general revenue sources.
- **Utility services** – These city-provided services are separately funded through user fees and taxes. Most cities provide sewer/water, many provide garbage and a few cities provide electricity, natural gas, and/or transit.
- **Capital budget** – This budget determines what capital improvements will be bought or built over several years, and how they will be financed.

The legal document

State law governs municipal budgets. Although no uniform budget document exists for cities, cities must use uniform revenue and expenditure categories specified by the state auditor (known as the BARS system). Cities can use either annual or biennial budgets, but most use annual.

In Washington, budgets must be balanced – anticipated revenues must equal forecasted expenditures. Unexpected revenues can be appropriated by a supplemental budget modification or can be allocated to reserve funds or to the following year's beginning balance. Expenditures which exceed revenues can be made only by the council transferring funds from reserve accounts (subject to council approval) or by issuing interest bearing warrants.

In Washington, budgets must be balanced – anticipated revenues must equal forecasted expenditures.

Additional resources:

Budget Suggestions, MRSC

Budgeting basics, AWC
eLearning

*A Revenue Guide for Washington
Cities and Towns*, MRSC

Center for Government
Innovation, Washington State
Auditor's Office

Financial Intelligence Tool,
Washington State Auditor's
Office

Budgeting methods

Cities and towns use three budgeting methods:

- **Line-item or incremental budgets** are used by most local governments. The budgets are prepared by adding proposed spending increases to current expenditure levels. It lists how much money will be spent on every item in a department. While this is the easiest budget method, it makes it difficult to analyze service delivery.
- **Program budgets** focus on specific services or outputs, and involve allocating resources to obtain desired goals. This approach makes it easier to set priorities and select among competing programs and service alternatives, but is more staff intensive.
- **Zero-base budgeting** is a nontraditional budget process in which “decision packages” are prepared for various levels of service for each activity. Programs and activities are reviewed and ranked according to how they meet the city's goals. The lowest ranking programs may be reduced or discontinued. Zero-base budgeting requires a high level of analysis and preparation.

The budget calendar

State law defines a city budget calendar, which specifies the timetable for completing the various steps leading to the budget's adoption. Many cities supplement the calendar with increased budget preparation during the summer, finance committee meetings during the fall, and ongoing budget reviews throughout the year.

Although many cities start the process earlier, the law requires department heads to prepare expenditure estimates for the coming year no later than the second Monday in September. The process ends when the final budget is adopted on or before December 31. Between these two dates, the clerk or other staff prepares the proposed preliminary budget for the mayor, the mayor or staff drafts the proposed budget and presents it to the council, and public hearings are held. The complete budget calendar, as spelled out in the statutes, along with the dates for the current year, is published each year in MRSC's *Budget Suggestions*.

The mayor/city manager's role

The state statutes provide details concerning the mayor/city manager's responsibility to prepare the preliminary budget and a “budget message.” Their authority to make transfers within individual funds is also spelled out in the statutes. (See Appendix 1)

Putting the budget together

Let's look at the actual budget process. It is definitely a team effort involving the mayor or city manager, council, and staff.

Setting policy

The council sets public policy in two major ways: by enacting ordinances during the year, and by establishing budgetary (taxing and spending) policies. Your city administration influences policy through budget implementation and recommendations to the council as to what is needed.

Estimating expenditures

Department heads prepare estimates based upon a projection of current trends, a forecast of the effect of new programs, and an estimate of what is needed to pay remaining bills.

Reviewing estimates

The mayor or city manager (in a council-manager city) reviews the department requests, taking into account policy objectives and priorities for new or expanded programs. It's a give-and-take process, sometimes with department heads lobbying for their program or service. What develops is a preliminary budget.

Estimating revenues

While expenditures are being estimated, the city's finance officer looks at revenues. Two key questions are raised: What factors impact future revenue flows, and what are the estimated level of revenues for the upcoming budget period? Once these questions are answered, revenue estimates should not be changed to accommodate additional spending desires.

Forecasting budgets

Although it's an optional step, forecasting your projected revenues and expenditures for up to five years helps determine whether your city can maintain its service levels. This long-term analysis helps pinpoint whether any corrective actions are necessary.

Preparing the document

The mayor/staff prepares the draft budget for council review. The actual budget document typically contains four parts: a budget message; a summary schedule of revenues and expenditures; detailed revenue elements; and expenditure details, with dollar and workload implications.

Adopting the budget

The mayor or city manager presents the budget to the council and the public for review and adoption. Some cities use a budget committee for review. Hearings are held with department heads and with the public to review expenditure requests. Once the hearings are completed, a budget ordinance is enacted. The ordinance authorizes funding specific expenditures with specific resources.

Budget do's & don'ts

Do:

- Find good basic training. AWC offers the Municipal Budgeting & Fiscal Management workshop annually.
- Evaluate materials and data carefully before you speak.
- Show your appreciation for staff. Respect their experience.
- Explore creative ways to meet your city's needs.

Don't:

- Expect to be an instant expert.
- Drown in details.
- Criticize previous budgets until you know all the facts and can correctly interpret them.
- Try to immediately change traditional budget practices.

Implementing the budget

The mayor/city manager's job is to implement the budget adopted by the council and to provide the council with periodic reports that show a comparison of accrued revenues and expenditures to the budget projections and appropriations. The law also requires the city to present a report of remaining expectation and unexpended balance for each appropriation to the council on a quarterly basis, however depending upon the financial condition of the city, it may be appropriate to provide a report more frequently. It is important to carefully monitor these budget results, which may be a function of the mayor's office.

State audit

Each city is audited by the Washington State Auditor's Office (SAO), and the audit includes an assessment of the internal control procedures over this monitoring routine. The financial condition of each of the city's individual funds should be reviewed in a documented procedure that will provide SAO with the information needed for this audit assessment.

In particular, the auditor's office reviews budget adjustments and strategies to resolve shortfalls and unanticipated expenses. Documented communications between the mayor's office and the council will demonstrate these strategies and assist with the auditor's evaluation of financial condition and internal controls over the implementation and monitoring of the budget. A copy of the report should be on file in your city's administrative office and are also available online (sao.wa.gov).

An inside look

Now that you know how the budget works, it is important to understand what the budget is – and what it is not.

The budget:

- Expresses your community's priorities.
- Works as a plan to identify resources and expenditure flows.
- Operates an annual work program by identifying objectives, guiding program management, and evaluating existing expenditures.
- Responds to change. The budget process is dynamic – it must be flexible to meet public needs, keep up with technology, and adjust to financial circumstances.

But the budget can't do it all. It will not:

- Be precisely accurate. The budget relies on estimates based on forecasts.
- Create efficiency. The budget is a resource allocation plan. It can't overcome obstacles in your management or staff structure.
- Establish public policy. Public policy is established through careful discussion before the budget is prepared.
- Make everyone happy. There will be winners and losers!

Resolving and preventing mayor-council conflict

It is essential that mayors and councilmembers understand their roles and how they relate to each other and staff. Many conflicts in city governments happen due to role confusion, resulting in overstepping the boundaries between the respective roles.

Although the boundaries are not always clear, the basic roles of the mayor and council are derived from the basic structure of city government, whether yours is the mayor-council or council-manager form. There is some variation in the powers and duties of mayors and councils between classes of cities, so be aware of the specific rules applicable to your class of city.

Separation of powers

Like the federal and state governments, a city government's powers are distributed among three separate branches: legislative, executive, and judicial.

- The city council is similar to the state Legislature or Congress.
- The mayor or manager, like the governor and the president, heads the executive branch.
- The municipal court (or the district court by contract) exercises judicial functions, although in a more limited way than the state or federal courts.

Under the "separation of powers doctrine," each of the three branches exercises certain defined powers, free from unreasonable interference by the others; yet all three branches interact with each other as part of a "checks and balances" system. The powers of these branches in city government are defined for the most part by state statute.

The mayor or city manager's authority

As the chief executive and administrative officer of the city, the mayor or city manager is in charge of carrying out the policies set by the council and seeing that local laws are enforced. The mayor or city manager is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees. The mayor or city manager oversees the hiring and firing of all appointed officers and employees, subject to civil laws, where applicable. Except for those in towns, councils have some authority to require confirmation of the appointment of certain officials. Councils may not, however, require confirmation of firings by the mayor or city manager.

The mayor or city manager is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees.

In general, the mayor or city manager also has the authority to:

- Enforce contracts.
- Bring lawsuits, with council approval.
- Preside over council meetings and, in some classes of cities, exercise some tie-breaking authority with respect to council votes and veto authority over ordinances.
- Call special meetings of the council.
- Prepare a proposed budget.
- Report to the council on the financial and other affairs and needs of the city.
- Approve or disapprove all official bonds and contractor's bonds.
- The mayor performs as ceremonial head of the city.

Consistent with the separation of powers doctrine, the council is not authorized to interfere with the mayor's administration of city government. Councilmembers may not give orders to department heads or to other city employees. To do its job, however, the council needs information on how the city is operating. The mayor, either directly or through other city staff, must provide that information and should do so in a timely and useful fashion.

Council powers

In general, it is the council's role to adopt policies for the city and it is the mayor's role to administer or carry out those policies. The council, being legislative, has the power to enact laws and policies, consistent with state law, usually through the enactment of ordinances and resolutions. The council also has specific authority to:

- Enact a city budget.
- Define the powers, functions, and duties of city officers and employees.
- Fix the compensation of officers and employees.
- Establish the working conditions of officers and employees.
- Maintain retirement and pension systems.
- Impose fines and penalties for violation of city ordinances.
- Enter into contracts.
- Regulate the acquisition, sale, ownership, and other disposition of real property.
- Provide governmental, recreational, educational, cultural, and social services.
- Impose taxes, if not prohibited by state law.
- Cause the city to own and operate utilities.
- Approve claims against the city.
- Grant franchises for the use of public ways.
- License, for the purpose of revenue and regulation, most any type of business.

In addition, the council is authorized to enact rules governing its procedures, including for public meetings and hearings.

The blurred line between policy and administration

Of course, things do not always run smoothly between the council and the city administration, and the line between policy and administration is sometimes not very clear.

One frequent source of conflict is personnel matters. The council may not like a mayor or city manager's appointment to a particular position, or it may be dissatisfied with the performance of certain officers or employees. An employee may complain to and seek relief from the council about some aspect of employment. On the other hand, the executive may believe that certain personnel policies interfere with his or her supervision of employees and hiring and firing authority.

The mayor or city manager may direct that all communications with city staff go through the mayor's office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

Whose role is it?

The remedy for some of these situations may be to review the respective roles of the mayor and the council and to understand the limitations of their respective authorities. For example, if the council is not happy with a mayoral appointment, there may be nothing the council can do directly within the bounds of its authority. However, if it has the authority to confirm a particular appointment, it can reject the appointee and force the mayor to choose another. If the council does not have confirmation authority, it can express its dissatisfaction to the mayor, but it can do nothing else with respect to that particular appointment.

The council may, however, provide for a detailed personnel system that establishes specific qualifications for positions, requiring publication and public posting of job opening announcements. Moreover, the mayor or city manager, at least in code cities, is required by statute to make appointments "on the basis of ability and training or experience."

Similarly, if the council feels that an officer or employee is performing poorly and should be disciplined or fired, it can say so to the mayor or city manager, but it has no power to do anything else. Although it controls the salaries paid to city officers and employees, it may not lower a salary with the purpose of causing the person holding that position to quit.

A rule to follow is that the council (and the mayor) may not do indirectly what it cannot do directly.

Council and staff communication

On the issue of communication between the council and city officers and employees, the mayor or city manager may not prevent councilmembers from gaining information, although they could reasonably regulate the process by which requests or questions are made. If councilmember inquiries of city employees are interpreted as harassing or unreasonable and may take them away from their duties, it may be necessary for the mayor or city manager to require those inquiries to be channeled through the mayor's or a department head's office, if that can be done without unduly encumbering council access to information.

"The most important single ingredient in the formula of success is knowing how to get along with people."

– Franklin D. Roosevelt

Additional resources:

Knowing the Territory - Basic Legal Guidelines for Washington City, County, and Special District Officials, MRSC

Conflict in the finance arena

Finance and budgets is another fertile area for conflict. For example, the mayor or city manager may decide not to take full advantage of the budget authorized by the council. The council may authorize a certain position at a certain salary, and the executive may decide either not to fill the position or may do so at half time and half salary. The mayor or city manager may cite financial emergencies, such as revenues falling short of projections, and may conclude that the city cannot afford someone filling this position full time. The council, on the other hand, may not agree that the conditions warrant such action or may determine that a different cost-saving measure is appropriate and should be instituted.

Resolution of this type of issue may prove particularly tricky. Although the mayor or city manager may not pay an employee less than is authorized by the council in the budget or in a separate salary ordinance, under certain financial circumstances, they may be able to partially fill a position, proportionately reducing the salary for the position. Legal authority, however, is hazy on such issues. The best strategy would be for the mayor or city manager and the council to work out a mutually agreeable accommodation.

Resolving conflicts

There are other issues that will likely arise (and that have arisen in other cities) where it is not clear who has the ultimate authority to act, the mayor or city manager or council. In these situations, the council and the city administration could draw their respective battle swords and charge; or, one or both sides could first analyze the issue, perhaps seeking counsel of the city attorney or the consultants at MRSC. Some cities have also brought in an outside facilitator to help them resolve their conflicts.

When the roles are not clearly defined in a particular situation, and the law is not clear, compromise may be in order. All sides need flexibility to meet the challenges of a well functioning city government. If the focus is on providing good government rather than on turf wars, councilmembers, mayors, and staff can better fulfill their roles as public servants.

The municipal/district court's authority over employees

The presiding judge in municipal or district court is delegated the authority to supervise court employees and control the daily operation of the court in General Rule 29 of the Washington Court Rules (GR 29). Separation of powers issues can arise when the executive branch (i.e., the mayor) desires to terminate, appoint or otherwise discipline a court employee. These types of actions are not within the authority of the executive branch because RCW 3.50.080 and GR 29 reserve this authority for the presiding judge. The city council does retain the authority to set salaries and establish benefits for court employees.

Note however, that courts must engage in good faith collective bargaining with court employees. The Washington State Supreme Court has determined that the requirement to bargain does not take away the court's inherent power to control the daily operation of the court and supervise court employees. *Washington State Council of County and City Employees v. Hahn*, 15 Wn. 2d 13 (2004).

Questions & answers

Q. If the mayor is out of town on an extended absence, should the mayor still be paid the regular salary?

A. Yes, if the salary is paid monthly and is not based on attendance at council meetings. It would be possible for a city council to pass an ordinance suspending salaries when elected officials are absent on extended trips, but the ordinance would only apply to officials elected after the effective date of the ordinance.

Q. Can councilmembers contact the city attorney directly, or do they have to go through the mayor?

A. Councilmembers have the right to seek advice directly from the city attorney. However, for practical reasons, some cities have established procedures whereby the questions to the city attorney are routinely funneled through the mayor or city manager, or the executive's permission needs to be obtained prior to calling the city attorney.

Q. Does the council have the authority to declare certain police cars to be surplus, and then sell them, even if the mayor/city manager disagrees?

A. Yes, because the decision to surplus major pieces of equipment is a policy decision, not an administrative decision.

Q. Can the city council fire an employee?

A. No, termination decisions are the sole responsibility of the mayor/city manager, though a mayor's decision to terminate a civil service employee is generally appealable to the local civil service commission. Union employees may also be able to appeal such decisions to an arbitrator, if the labor contract provides for this.

Q. Can the mayor (or city manager) of a code city authorize the purchase of a computer over the city council's objection?

A. The city council has final authority over budgeting and contracting. If the executive would like to purchase a computer for use by a particular staff member, council approval is still required. The council can delegate purchasing authority to the mayor and administrative staff. Routine purchases which are clearly within the budget limits should be administrative decisions.

Q. May the mayor (or city manager) refuse to carry out the directives of the council?

A. In general, no. The executive's job is to carry out the policies enacted by the council. If a mayor believes that the city council is acting beyond its authority, or has adopted a policy which violates a statute or constitutional provision, the city attorney should be asked to provide a detailed opinion to guide the officials.

Q. In the strong-mayor form of government, can the city establish a city administrator position and transfer some of the mayor's duties to that person?

A. Though the council can establish the position and define the responsibilities of the job, the council has no authority to take powers from the mayor which have been granted to the mayor by state statutes. All staff work under the supervision of the mayor, and any city administrator is ultimately an assistant to the mayor.

Q. If the mayor or city manager believes that it is crucial for certain city staff to attend training sessions held outside the city, can the council prohibit such trainings?

A. Because the council controls the budget, sets policy and approves contracts, the council could prohibit expenditures for such trainings. The executive would need to convince the council that the training is a priority, perhaps proposing other spending cuts which would free up money for the training.

Practical advice

Helpful pointers from other elected officials.

Relationships within council ...

- **Appreciate each councilmember's special skills.** Get to know them personally. Find out what they think is important. Ask for their opinion.
- **Keep disagreements from getting too personal.** As one councilmember said, "If we can't sit up here and argue and then go out with the same people and have a cup of coffee, then we have no business being on the council."
- **Always be courteous to other councilmembers.** This includes new councilmembers who come on board with an agenda. Keep that door open.
- **A mayor needs to be open and honest.** Give councilmembers all the background information they need on issues. Don't do things behind people's backs. Keep everyone informed.
- **Address conflict head-on.**
- **Give the council enough information to make a knowledgeable decision.** But don't overdo it so much that they feel compelled to "micromanage."
- **Laugh together.** Share thoughts and dreams, and tell stories about yourself. Bring donuts!

Roles of the mayor and council

Policy making & implementation

Mayor

- Keep council informed on city affairs.
- Propose policy.
- Implement policy adopted by council.
- Report back to council regarding policy implementation and possible improvements.

Council

- Listen to city residents – keep track of their concerns and wishes.
- Discuss, develop, and adopt city policies governing many aspects of city operations.

Personnel matters

Mayor

- Hire, fire, supervise, and discipline all city employees (in some cities, council confirmation of certain appointments can be required). Civil service rules and labor contracts must be followed, if applicable.
- Negotiate labor contracts (sometimes mayor is not a member of negotiating team).

Council

- Adopt personnel policies, establish positions, set wages and benefits – council should not meddle in mayor's supervision of employees or interfere with work of employees.
- Establish bargaining parameters and approve final labor contract.

City budget

Mayor

- Work with staff to develop preliminary budget.
- Lead council in process of establishing goals and priorities for the city.
- Implement budget adopted by council, provide regular financial reports, and present alternatives when council needs to deal with budget problems.

Council

- Establish goals and priorities which provide framework for budget – discuss and adopt final budget – amend budget as needed.
- Set city tax rates, to the extent permitted by statutes.
- Set utility rates and other fees as required.

Council meetings

Mayor

- Prepare agenda, preside over meetings, report to council about city administration, propose policy initiatives or changes.
- Vote on measures allowed by the statutes. Veto ordinances, as permitted by statutes.
- As presider, facilitate an orderly meeting.

Council

- Adopt council rules of procedure.
- Participate in preparation of council meeting agenda as provided in council rules.
- Discuss all policy matters and make decisions following the adopted rules.

Land use and planning

Mayor

- Supervise planning staff, who make recommendations to the planning commission and council on a broad range of planning issues.
- Supervise staff who enforce building codes and other development regulations.

Council

- Adopt and amend zoning, development regulations, and comprehensive plan after receiving input from staff, residents, planning commission, and others.
- Act in quasi-judicial capacity to decide land use issues.
- Amend planning documents as necessary.

City expenditures, contracts

Mayor

- Sign contracts, supervise contract performance, enforce contracts.

Council

- Approve contracts and all city expenditures.

Relationships with other entities

Mayor

- Represent city as official spokesman, in accordance with views or goals set by council.
- Act as official head of city for ceremonial events such as ribbon cuttings and sister-city contacts.

Council

- Decide whether city will participate in optional government organizations, provide guidance to mayor or other city representatives.
- May serve as city representative on certain intergovernmental bodies where mayor is not designated member.

Council meetings

The mayor's role in the council meeting

The mayor, as presiding officer, holds the key to an effective council meeting that runs smoothly and produces results. He or she not only participates in the meeting but also manages the process, the agenda items and the people involved.

Will the meeting come to order?

As presiding officer, the duties of the mayor are to:

- Open the meeting on time and call the meeting to order.
 - Announce business on the agenda in the proper sequence.
 - Recognize members for motions and statements, and allow audience participation at the appropriate times.
 - State and vote on all legitimate questions that arise during the meeting. If a motion is out of order, the chair should rule it out of order.
 - Protect the council from frivolous or delaying motions by refusing to recognize them.
 - Enforce the rules regarding debate, make sure that speakers limit their remarks to the item being considered, and keep order at the meeting.
 - Expedite business in a way compatible with the rights of the members.
 - Decide all questions of order.
 - Respond to inquiries of members.
 - Declare the meeting adjourned.
-

Legal requirements for meetings

The mayor should become familiar with legal meeting requirements imposed by state law. This includes knowing what actions are required on ordinances and resolutions, when executive sessions are appropriate, and what is involved in a quasi-judicial hearing.

The city attorney can help with these matters, but if the mayor knows the basics, they can save time and avoid illegal or incomplete actions. (See Appendix 4 for more details on what is required under the Open Public Meetings Act, and Appendix 6 for guidance on the Appearance of Fairness doctrine.)

Council rules of procedure

It is up to every council to establish rules for the conduct of their meetings. Some councils adopt standard rules, such as Robert's Rules of Order or some other parliamentary procedure; and others develop their own customized bylaws which govern how council meetings proceed. Local rules are valid as long as they don't infringe on constitutional rights or conflict with state law. (See Appendix 5 for sample council procedures.)

What is parliamentary procedure and why should you use it?

Parliamentary procedure is the set of rules or customs that regulates the procedure of legislative bodies. It governs how to make, amend and approve or defeat a motion. There is no need to be intimidated – a mayor need not become a certified parliamentarian to effectively use the basic rules of procedure. Observing parliamentary procedure makes council meetings more efficient and reduces the chances of council actions being declared illegal or challenged for procedural deficiencies. (See Appendix 9 for a quick summary of parliamentary procedure.)

Additional resources:

Robert's Rules of Order

*American Institute of
Parliamentarians Standard Code
of Parliamentary Procedure*

*Mastering Council Meetings: A
guidebook for elected officials
and local governments*
Ann Macfarlane & Andrew
Estep

Motions

Business is brought before the council by motions, a formal procedure for taking actions. To make a motion, a member must first be recognized by the presiding officer. After the member makes a motion (and after the motion is seconded if required), the chair must then restate it or rule it out of order, then call for discussion. Most motions require a second, although there are some exceptions:

- Nominations;
- Points of order;
- Questions of privilege; and
- Calls for the order of the day.

Voting and vetoes

The mayor's ability to vote on and veto motions varies, according to the city's classification and form of government. (See Appendix 2, Voting and Vetoes.)

Whose meeting is it anyway?

In general, mayors should remember that the council meeting is just that – it's the council's meeting, not the mayor's meeting. The council sets its own rules and has ultimate control over the agenda. The mayor's role is to chair the meeting.

The mayor must balance being strong enough with being democratic enough to involve all members in the meeting. To be effective, the mayor needs the support of the councilmembers. Trust is built by evenhandedness and fairness to all participants. Trust also requires that the chairperson not use the powers of the chair unfairly to win a point or argument.

In addition to maintaining order and decorum at council meetings, the mayor must ensure that all motions are properly dealt with as they arise.

The mayor's refusal to allow a motion to be considered is subject to appeal, as are all of the mayor's decisions regarding procedures.

A simple majority vote is all that is required to overrule the mayor's decision on procedural issues, including adjournment. If the decision of the chair is sustained, no further action is taken; but if the decision of the chair is overruled by the council, the council goes forward with the discussion of the motion or other matter before it.

The mayor as meeting participant

The mayor chairs all council meetings and, in some circumstances, is allowed to vote. The mayor might also wish to join the council in its discussions and deliberations. When the mayor chooses to participate, they have two competing goals - as moderator, to make sure that the group achieves its goal and, as an elected official, to both participate in the debate and help determine policies. Participation requires a balancing act between the traditional moderator role and that of active engagement in debate. When the mayor decides to participate, they should exercise restraint. Too forceful participation can dampen council discussions and result in some councilmembers deferring to the mayor's comments, simply due to the perceived role as the mayor as boss.

The council meeting agenda

There is no required format or particular order for the council meeting agenda. However, a typical agenda for a city council meeting looks like this:

- Call to order
- Roll call/pledge of allegiance
- Approval of agenda/minutes
- Comments from the public
- Consent agenda
- Ordinances & resolutions
- Public hearings
- Unfinished business
- New business
- Council action/discussion
- Committee reports
- Executive session
- Adjournment

The council's role in the council meeting

A city or town council meeting is the place to get the critical job of decision-making accomplished. A smoothly managed and productive council meeting does not necessarily guarantee good results, but it certainly helps.

In general, mayors should remember that the council meeting is just that – it's the council's meeting, not the mayor's meeting. The council sets its own rules and has ultimate control over the agenda. The mayor's role is to chair the meeting. As moderator, the mayor should facilitate the meeting while allowing full council participation, maintain order and decorum, and see that all motions are properly dealt with as they arise.

The agenda

Perhaps one of the most crucial tools for orderly meetings is a well-organized and well-prepared agenda. The agenda must be handled so that councilmembers receive adequate information in advance on items for consideration.

While it is not mandatory at a city council meeting, the council should provide the opportunity for appropriate public participation. State law requires each city to establish a procedure to notify the public of the agenda for upcoming council meetings. Items on the agenda should be prioritized and organized as efficiently as possible, allocating enough time for major issues and minimizing time spent on trivial, noncontroversial issues. In addition, the city must make agendas available online at least 24 hours prior to a meeting unless there is no website or the city employs fewer than ten full-time equivalent employees. City residents should also get the opportunity to address the council on other subjects of interest.

Who determines the agenda content?

Although the council has ultimate control over the agenda, typically it's left to the mayor, city manager, or clerk to draw up the agenda, based on council input. Some cities assign this task to an agenda committee or to one councilmember who assists the mayor or manager. The council can change its order of business or a councilmember can propose an additional new item of business.

Remember – It's the council's meeting, not the mayor's meeting.

Council rules of procedure

It is up to every council to establish rules for the conduct of their meetings. Some councils adopt standard rules, such as Robert's Rules of Order or some other parliamentary procedure; others develop their own customized bylaws which govern how council meetings proceed. Local rules are valid as long as they don't infringe on constitutional rights or conflict with state law. (See Appendix 2 for Sample Council Procedures.)

Parliamentary procedure

Parliamentary procedure is the set of rules or customs that regulate the procedure of deliberative assemblies. There is no need to be intimidated – a councilmember need not become a certified Parliamentarian to effectively use the basic rules of procedure. Observing parliamentary procedure makes council meetings more efficient and reduces the chances of council actions being declared illegal or challenged for procedural deficiencies. Either by ordinance or resolution, a city may adopt a set of procedural rules or employ standardized rules such as Robert's Rules of Order. (See Appendix 6 for a summary of parliamentary procedure.)

Streamlining council meetings

Even the best planned council meetings can deteriorate into endurance contests. These are not always the most productive meetings – exhausted people don't always make the best decisions. Here are some tips on things you can do to "shorten meetings."

Regulating talk

Too much talking is the most common cause of lengthy meetings. If persons addressing the council ramble, the mayor might tell them to confine their remarks to the subject at hand and conclude as quickly as possible. Many council procedures limit public comment to 3-5 minutes, and limit the number of speakers on any one topic. Another idea is to include an approximate starting time by each major agenda item. This information also is useful to city residents attending the meeting.

If the problem is created by a talkative councilmember, a simple statement such as "it's getting late and we must move along" usually will work, though a private conversation later on may be needed to handle chronic talkers.

Shortening the agenda

An important consideration to make the agenda manageable is to keep things off of it that don't belong there. The formal council agenda is the place for formal actions on the part of the governing body. In general, every regular meeting agenda item should include an instrument for council action. Items that are solely for the information and advice of the council should be provided outside the formal agenda process.

“Consent” agendas

The consent agenda is a tool used to streamline council meetings. Routine, noncontroversial items are listed collectively on the agenda and are passed with a single motion and vote.

In some cities, the actual items placed on each consent agenda are selected at a weekly city department heads’ meeting. In others, an agenda committee chooses the consent items.

- Commonly, there is no debate allowed on the consent agenda or on any item included in it. The motion for adoption must receive unanimous approval.
- Consent items may be read by title only.
- Any councilmember can have an item removed from the consent agenda for separate consideration. In addition, some cities allow any person attending the regular council meeting to request that an item be voted on independently. The remainder of the consent agenda can be voted on, omitting the challenged items.

Setting up a consent agenda system usually requires preliminary action by the council in the form of adopting an ordinance or resolution, but a consent agenda can be used by most councils on a trial basis.

Who determines the agenda content?

Although the council has ultimate control over the agenda, typically it’s left to the mayor or clerk to draw up the agenda, based upon council input. Some cities assign this task to an agenda committee or one councilmember who assists the mayor. The council can change its order of business or a councilmember can propose an additional new item of business.

Council work sessions

Informal council work sessions may be needed occasionally to study certain matters in detail. These are most often held in conjunction with budget review. Work sessions also are useful when major policy questions must be decided, or when a complicated ordinance, such as a building code, comes before the council.

Note: The Washington Open Public Meetings Act applies to all council meetings and work sessions, whether formal or informal. (See Appendix 4, Open Public Meetings Act.)

The subcommittee*

Many elected bodies divide into subcommittees to study specific issues. Elected bodies may have both standing and ad hoc subcommittees. Subcommittees can either facilitate the decision-making process or consume unwarranted amounts of time and effort. Here are some pointers on the use of subcommittees:

1. **Clearly define the mission** before creating a subcommittee.
2. **Set deadlines** for reports.
3. **Monitor assignments** to check on progress.
4. **Establish expiration** provisions and enforce them.
5. **Rotate membership** periodically.
6. **Keep nonmembers informed** of meetings and actions.
7. **Monitor the amount of staff effort** required.
8. **Review the list of subcommittees annually** and delete those that are no longer necessary.

Meeting diagnosis*

- Meetings start on time.
- Meetings end at a reasonable hour.
- The council sticks to the agenda.
- The public is encouraged to participate.
- The council does not attempt to engineer “how-to” details at the meeting.
- No one tends to dominate the discussion.
- All members participate.
- Members do not engage in side conversations during the meeting.
- Members actively listen to each other.
- Members do their homework.
- Unnecessary meetings are not called.
- Packed audiences do not unduly sway the council.

*Source: Elected Official's Little Handbook, Len Wood.

Voting guide

Quorum

The general rule governing the transaction of council business is that a majority of councilmembers must be present at the meeting to constitute a quorum. This means four members of a seven-member council and three members of a five-member council.

Abstentions

In the absence of a local statute to the contrary, councilmembers are free to abstain from voting on any issue before the council. Some cities have adopted local rules of procedure allowing abstentions only when the councilmember states his or her reason for abstaining. Other cities require councilmembers to vote on all matters before the council unless a conflict of interest exists. When a conflict of interest exists, a councilmember should refrain from voting. Generally, however, other councilmembers cannot restrain a councilmember from voting due to a conflict of interest or for any other reason.

The effect of an abstention on a vote is not specified by state law. Municipalities are free to adopt local rules of procedure stating the effect of an abstention. See Appendix 2, Sample City Council Rules of Procedure (Rule 5.4) for an example of a rule which provides that failure to vote when there is no valid disqualification is counted as an affirmative vote on the question. If a city does not have a rule, abstentions by one or more councilmembers may make it impossible for final action to be taken on a matter, particularly where a majority vote of the full council is needed.

Voting by proxy

It is a fundamental rule of parliamentary law that the right to vote is limited to those members actually present at the time a vote is taken at a legal meeting. State law is silent as to proxy voting by councilmembers. As a general rule, proxy votes are not permitted. If the city or town has not adopted a rule of procedure to the contrary, councilmembers must be present at the time the vote is taken. There is no Washington court case law on this issue. Participation by speaker phone is a possible alternative; discuss this issue with your city attorney.

Mayor's authority to vote

Charter cities

In charter cities, each city charter governs the voting powers of the mayor.

Mayor-council form

Under the mayor-council form of government, the mayor may vote only in case of a tie vote of the council. However, statutes for each class of city may further limit the mayor's tie-breaking authority, as follows:

- **Second class cities.** Because at least four councilmember votes are required to pass any ordinance, resolution, or order (RCW 35.23.211), the mayor cannot break a tie vote on those matters.
- **Towns.** At least three councilmembers must vote to pass any resolution or order for the payment of money (RCW 35.27.270) or to pass an ordinance or resolution granting a franchise (RCW 35.27.330). Thus, the mayor's vote cannot be used to break a tie vote on these issues.
- **Code cities.** A majority of the entire membership of the council is required to vote to pass any ordinance, grant, revocation of franchise or license, or any resolution for the payment of money (RCW 35A.12.120). Therefore, the mayor may not break a tie vote on these matters.

Council-manager form

In all cities operating under the council-manager form of government, the mayor is eligible to vote in his or her capacity as councilmember.

Mayor's veto power

- In **charter cities**, each city charter governs the veto powers of the mayor.
- In **council-manager cities**, the mayor votes as a councilmember and has no veto power.
- In **second class mayor-council cities**, the mayor may veto an ordinance, but the mayor's veto can be overruled by five members of the council (RCW 35.23.211).
- In **towns**, the mayor has no veto power.
- In **mayor-council code cities**, the mayor may veto an ordinance, but the mayor's veto can be overruled by a majority plus one of the entire council membership (RCW 35A.12.100).

Questions & answers

Q. Can a meeting of the city council be opened with a prayer?

A. Courts have ruled that beginning a local government public meeting with a nondenominational prayer, or a silent meditation of a short duration, does not violate the U.S. Constitution. Keep in mind, however, that many residents have strong feelings about their own particular religious beliefs, and some residents adamantly feel that religion and government should not be mixed. The decision concerning whether meetings open with an invocation should be made by the council, not by the mayor. Most cities in Washington have chosen to not commence their meetings with an invocation.

Q. Who, if anyone, can make a motion for reconsideration where a matter was defeated by a tie vote?

A. Under Robert's Rules, §36, anyone who was on the prevailing side of a vote can make a motion to reconsider, and the prevailing side need not be a majority, such as when a tie vote functions to defeat a matter. In that case, those who voted no would be entitled to make the motion to reconsider.

Q. Can the mayor unilaterally adjourn a council meeting?

A. No, not in normal circumstances. The mayor can request that a councilmember move that the meeting be adjourned, but the motion and subsequent vote are up to the council. If there is a disruption during a council meeting which requires a break in the meeting to restore order, it would be appropriate for the mayor to announce that the meeting is adjourned for ten minutes, but other than that, it is up to the council whether they wish to continue dealing with business.

Q. May a councilmember who was absent when a vote was taken move to reconsider that vote?

A. No. An absent member could not have been on the prevailing side, or any side, for that matter.

Q. If the council passes an ordinance at one meeting, can that ordinance be reconsidered at the subsequent meeting?

A. If the ordinance was passed and signed by the mayor, then the ordinance can subsequently be amended or repealed, but not reconsidered.

Q. Does the mayor in a code city have the veto power over ordinances?

A. Under RCW 35A.12.100, the mayor in a code city has the power to veto ordinances passed by the city council, although a mayor's veto may be overridden by a majority of the council plus one. This is not a "line item" veto, but rather a veto over an entire ordinance only. (See Appendix 2, Voting & Vetoes, for the mayor's veto power in second class cities and towns.)

Practical advice

Helpful pointers from other Washington mayors.

Presiding over meetings ...

- **Work at running an efficient meeting.** Even if you live in a small town, it's important to run your meetings professionally and act professionally.
- **It is very important to have formal meetings and know Roberts Rules of Order.** One of the mistakes (particularly in small cities) is trying to be very informal. Recognize "Councilmember Smith" rather than "George." This also helps keep the debate from getting too personal.
- **Be careful with executive sessions.** Only use executive sessions for issues that are specifically allowed.
- **Bring some humor to the council meetings.** Keep your cool!
- **Insist upon decorum in council meetings.** Be courteous to members of the public and let them know you appreciate their comments.
- **Don't spring surprises on your councilmembers or city staff,** especially at public meetings. If a matter is worth discussing, it is worth putting on the agenda. Surprises may get you publicity, but they may embarrass others and tend to erode the "team" approach to governance.
- **Have your city attorney attend your council meetings,** but don't expect the attorney to know all the answers right on the spot. Give the attorney time to research issues.

Community participation at council meetings

The public evaluates the performance of its elected officials to a great extent by what happens at meetings. Many residents form their total opinions of the city government on the basis of having attended just one council meeting. This is the time to impress your community favorably, and show them that the council is capable of doing its job.

The city resident comment period is a time slot set aside on the agenda for city residents to address the council on any subject. It is not to be confused with a public hearing, which is a formal proceeding conducted for the purpose of discussing a specific topic, such as the city budget or a proposed rezoning.

Local practices vary considerably with respect to reserving a place on the agenda for community participation. Although not required by state law, councils will often provide an opportunity for members of the public to address the council. If allowed, many councils will put this item toward the top of the agenda, so that residents can make an appearance early in the meeting and then go about their business. Other councils reserve a place for presentations at the very end of the agenda, while others make no provision at all. The presiding officer should inform visitors of the place on the agenda where they will be recognized to speak. If an exceptionally controversial item draws a large crowd, it is generally wise to state the approximate time the item will come up for discussion.

Move the agenda along

To move the agenda along, some councils limit the length of time any person may speak from three to five minutes, and permit this to be extended only by a two-thirds vote of the council.

Don't allow verbal exchanges to drag on between residents and councilmembers, especially if they concern administrative problems that can be solved by the staff during regular city hall hours. Also, if speakers take too much time or engage in personal attacks on councilmembers, it may be necessary for the mayor to cut them short. Councilmembers are expected to be polite to residents appearing before them, but there is no requirement that they subject themselves to intimidation by rude speakers.

Dealing with critics and pressure groups

Criticism of government and a lack of confidence in our country's elected leaders is rampant these days, even at the local level. External conflict, while stressful, can help frame the issues and provide other perspectives. Most important, it often shows that people feel left out and alienated from the governing body.

Providing a fair hearing of issues at council meetings assures that the needs of pressure groups are appropriately balanced with the organization's mission and the greater needs of the community. How the governing body reacts will determine whether the conflict is contained or spills over to other issues.

Many residents form their total opinion of the city government based on having attended just one council meeting

How to deal with criticism:

- The governing body should listen actively to its critics – listen to learn and understand, not to argue, dispute or to silence those critics. Attempt to find some area of agreement by sorting out the issues into those that can be dealt with and those that are outside the scope of authority or the range of possibility to be resolved.
- The council's spokesperson should express regret that the problem has arisen. It is helpful to state that you understand how the person or group feels. Perhaps you might even restate their concerns. If you feel personally attacked, it is OK to say that you feel hurt by the comments.
- At some point, the council's action must be defended. Try to help people understand the factors that influenced the council, or discuss the parameters that will influence an impending decision which is under attack.
- When attacked, think carefully before responding. Know your facts. Be truthful. Credibility is your most important asset in dealing with your critics.
- Don't belittle small but vocal sources of opposition. Don't label people.
- Remember that groups which are fostering a narrow self-interest will self-destruct through an inability to gain mainstream support. Don't overreact.
- Keep in mind that anger is directed at your role, not at you as an individual.
- Last but not least, while remaining respectful, keep a sense of humor.

The mayor's role in managing difficult meetings*

From time to time, elected bodies are faced with conducting highly charged, controversial meetings, full of aggression and hostility. Such meetings really test the elected body and staff. Here are some ideas on handling those difficult meetings:

Before the meeting

- Try to get the participants to designate a spokesperson.
- Make agendas and back-up reports easily available to participants.
- Make sure adequate seating is available. Consider moving to larger quarters if necessary.
- Make sure sound and recording equipment is adequate and operational.

During the meeting

- Explain the issues, the possible actions and the procedures that will be followed at the meeting.
- Don't waste time or try the patience of participants at the beginning of the meeting on routine items such as correcting the minutes.
- Have speakers address the elected body and not the audience. Some speakers are very adept at inciting audiences, especially if they are permitted to face the audience.
- Explain at the beginning why clapping, shouting and other such demonstrations are counterproductive and stop such actions as soon as they occur.
- Use recesses to help diffuse hostility or aggressiveness.
- Consider limiting speakers to a set time such as three to five minutes. If such a procedure is used, make sure it's applied consistently.
- Consider using speaker cards that are filled out and turned in at the beginning of the meeting. The cards can help identify how many people wish to speak and whether they support or contest an issue. They are also invaluable in recording the names and addresses of speakers. Recognize, however, that persons not wishing to fill out a card may still have the legal right to speak.
- Make sure elected members address colleagues and not the audience. Directly addressing the audience can result in loss of control of the meeting.
- Immediately continue items that cannot be decided at the meeting. This does not preclude the elected body from allowing anyone who wishes to speak on the issue to do so.

Ask the public...

- How will this proposal affect you?
- What do you think about the proposed action?
- What are your concerns?
- What other ways can you suggest for solving the problem?

*Source: Elected Official's Little Handbook, Len Wood.

Ethical issues

Part of being a public official is subjecting yourself to public scrutiny. Like it or not, the public expects you to behave according to higher standards than the next person on the street.

The following list includes some of the more common problems that get newspaper coverage. At the very least, most will result in public criticism. They can also be terminal to your career.

- **Credit cards.** Using city credit cards for an unauthorized expenditure or to charge a personal item (even if the amount is repaid later).
- **Travel and conferences.** Submitting inflated or false travel expenses. This includes using agency funds for personal trips or vacations.
- **Use of letterhead.** Using official letterhead to endorse another political candidate or to achieve a personal or business gain.
- **Use of agency vehicles.** Using an agency vehicle for personal trips, vacations or political campaign activities.
- **Phones, fax and computers.** Using official equipment for personal purposes.
- **Agency staff.** Using agency staff and resources for personal services or political campaigning.
- **Confidentiality.** Divulging privileged personnel, legal or executive session information.
- **Sexual harassment.** Telling off-color jokes at meetings, improper comments or touching of staff.

State and local ethics laws

State law provides a specific code of ethics for city officials. RCW 42.23.070 prohibits a municipal official from:

- Using his or her position to secure special privileges or exemptions for himself, herself, or others.
- Directly or indirectly, giving or receiving any compensation, gift, gratuity, or reward from any sources, except the employing city, for a matter related to the official's services.
- Accepting employment or engaging in business that the officer might reasonably expect would require him or her to disclose confidential information acquired by reason of his or her position.
- Disclosing confidential information gained by reason of the officer's position, or use of such information for personal gain.

Private interest in public contracts

State law also forbids city officials from having personal financial interests in public contracts under their jurisdiction, regardless whether or not they vote on the matter. There are a few exceptions, some based on contract amounts. Review the statute carefully and when in doubt, consult with your city attorney (RCW 42.23.030).

If you're not sure what to do, ask:

- Is it legal?
- Is it ethical?
- Is it the right thing to do?

Additional resource:

Knowing the Territory, MRSC

Local ethics codes

Be aware that your city may have a local ethics code that interprets or supplements the state laws. There are also requirements for cities to establish their own whistleblower process, providing a means for employees to report improper governmental actions. Ask your clerk or attorney for a copy of any local ordinances or guidelines relating to ethics and conflict of interest.

Questions & answers

Q. Are elected officials prohibited from accepting even promotional gift items of minimal intrinsic value from someone who does or may seek to do business with the city?

A. Many officials, either because of the broad language of the ethics statute or on principle, refuse to accept even a business lunch under those circumstances. Others might regard items of only token or trivial value to be “de minimis”, i.e., of insufficient amount to cause legal concern.

In any case, prudence is always advisable to avoid even the appearance of impropriety. Also, because the words “token” and “trivial” may have varying interpretations, a city council may wish to provide more specific guidance in a local code of ethics.

Q. Can the mayor hire a councilmember to work part-time for the city?

A. It depends. Even if a councilmember has special skills of benefit to the city, RCW 42.23.030 restricts the amount of money which can be paid to a councilmember by a city over the course of a year. For a city with a population of 10,000 or more, the amount that can be paid is zero. Additionally, a councilmember may not hold another “office” of the city. Finally, be aware that it can be awkward to have the mayor supervising a councilmember in an employer/employee relationship. Review any plans to employ a councilmember, in any capacity, with the city attorney.

Q. Can the city do business with a company owned by a mayor or councilmember?

A. Watch out! If the amount of the overall contract exceeds \$18,000 (zero if the city’s population is 10,000 or more), there can be serious consequences, including forfeiture of office (RCW 42.23.050). For example, a city councilmember cannot be a subcontractor on a city construction project if the overall project cost exceeds \$18,000 (RCW 42.23.030). If the city’s population is 10,000 or more, there can be no interest in a contract.

Resources

Who to contact when you need help

Municipal Research & Services Center of Washington (MRSC)

Here's the first place to start when you don't know where to go. Several consultants at MRSC can answer your questions over the phone or in writing. Staff experience includes municipal law, budgeting & finance, planning & growth management, public works & utilities, and public policy. MRSC's library is full of useful reference materials, and includes actual city policies and ordinances. MRSC has a great website, containing a wealth of information relevant to local governments in Washington State. The site also includes links to other useful websites such as state agencies.

MRSC

2601 4th Avenue, Suite 800
Seattle, WA 98121-1280
206.625.1300
1.800.933.6772
Fax 206.625.1220
mrsc@mrsc.org
www.mrsc.org

Association of Washington Cities (AWC)

AWC serves its members through advocacy, education and services. Founded in 1933, AWC is a private, nonprofit, nonpartisan corporation that represents Washington's cities and towns before the state legislature, the state executive branch, and with regulatory agencies. AWC also provides training, data and publications, and programs such as the AWC Employee Benefit Trust, AWC Risk Management Service Agency, AWC Workers' Comp Retro, AWC Drug and Alcohol Consortium, and the AWC GIS Consortium.

AWC

1076 Franklin Street SE
Olympia, WA 98501-1346
360.753.4137
1.800.562.8981
Fax 360.753.4896
wacities.org

Other ideas for helpful contacts

Here are some other ideas for you to contact when you have a problem or need information:

Neighboring jurisdictions

Many cities in the state have formed regional groups of mayors and other elected officials that meet periodically. Or call an experienced mayor with a neighboring city (really, they are usually honored to be called upon as an "expert").

Your liability insurance provider

Most cities in the state are covered by one of three insurance pools that provide property and liability insurance. Find out from your city clerk who your provider is. Depending on the pool, they offer a variety of resources. For example, if you're doing something where you expect a lawsuit might be filed, contact your risk pool before you take action. They can provide invaluable advice, legal resources, sample policies, and training resources.

Forging partnerships

Introduce yourself to and meet with other public agencies in your region. They may be able to help, share resources, or co-sponsor training. Examples: County, port, local economic development agency, public utility district, fire district, state agencies with an office in your area, and school districts. It may also help to contact any jurisdictions that provide contractual services to your jurisdiction.

MRSC publications

MRSC maintains the following selected resources for city officials and staff at mrsc.org. Any of the publications below can be downloaded at mrsc.org/Home/Publications.aspx or found by browsing the MRSC website using the search toolbar.

The Appearance of Fairness Doctrine in Washington State

This publication is an overview of the appearance of fairness statute, including suggestions for assuring compliance, commonly asked questions, and a summary of cases.

Budget Suggestions

This annual publication contains the latest information about things that might impact your city budget such as state-shared revenue distributions, new legislation, and economic trends. Highlights include revenue forecasts, CPI and IPD information, budget calendars, fire insurance premium tax estimates, and more.

Candidate Information Resources for Local Government Elective Offices

This webpage provides candidate information resources of special interest to local government elected office candidates in Washington State.

Code City Handbook

A handbook providing essential information for code city officials and incites their powers, duties, and alternatives that are available under the applicable forms of municipal government.

Knowing the Territory – Basic Legal Guidelines for City, County, and Special District Officials

A guideline detailing the do's and don'ts regarding the exercise of governmental powers including conflicts of interest, the open public meetings act, appearance of fairness doctrine, and similar laws. It also points out immunities and protections for public officials.

The City Bidding Book

This book helps city officials determine whether competitive bids are required for acquiring purchases, services, or contracting for public works.

The Open Public Meetings Act: How it Applies to Washington Cities, Counties, and Special Purpose Districts

This publication covers the requirements under the Open Public Meetings Act including procedural requirements, executive sessions, appearance of fairness, exemptions, penalties, and identifies relevant case law and attorney general opinions.

Public Records Act for Washington Cities, Counties, and Special Purpose Districts

This frequently-updated publication provides a basic outline of the Public Records Act (PRA) and the procedures to follow when responding to public records requests for documents.

Quick Guide for Newly Elected City Officials

The web guide provides a quick introduction to the core duties and responsibilities of newly elected city officials in Washington State, along with recommended resources for more information.

A Revenue Guide for Washington Cities and Towns

This guide describes the major, and many of the minor revenue sources that can be used for general government purposes. It includes common questions and answers.

Washington City & Town Officials Directory Mobile App

Download MRSC's directory of Washington city and town officials as a mobile app. Visit mrsc.org to browse the directory of city officials, city halls, phone numbers, emails, population, and city class/form of government. Or use the same website to download the app under "Research Tools" and "Washington City and Town Profiles."

AWC publications

The following publications are available from AWC online or in print. Your city clerk or other staff should have a copy available. If not, call AWC to request any publication. Visit wacities.org and browse these publications and more under the “Data & Resources” tab.

CityVoice

A weekly electronic publication sent on Wednesdays to all city officials and AWC partners. The newsletter delivers information relevant to cities including breaking news, state and federal updates, tools and resources, research and data, training opportunities, and grant notices.

Cityvision

An award-winning magazine that examines municipal issues and trends from a high level, with articles that analyze and offer insight. The magazine creates a voice for city officials and provides another leadership tool and resource to build awareness of city issues with readers outside of city hall.

Elected Officials’ Roadmap

A visual roadmap to help guide elected officials through their role including what the city does and what you should know about working in elected office.

Exploring Washington’s Cities and Towns

Cities are the governments closest to the people. But what makes a city and why does it matter? This high-level resource offers a clear and persuasive description of the essential role they play. You’ll find ready-to-share information and graphics to bring your community up to speed on how cities budget, how city funds are used, what city governments do, and what city employees do, all interspersed with facts and figures that illustrate the breadth of work that cities do every day to make our communities shine.

Homelessness & Housing Toolkit for Cities

This publication provides real-world examples of tools and actions Washington cities have used in responding to the issues of homelessness and affordable housing.

Legislative Bulletin

This electronic publication is delivered weekly throughout the legislative session and monthly the rest of the year. The newsletter covers major issue areas and provides quick referencing by issue area.

Strong Cities Pocket Guide

What can you do to help promote a strong city-state partnership? This guide contains tips for simple actions that city officials can take to advocate for strong cities, like maintaining and building stronger relationships with your legislators and working with constituents keep the Legislature accountable.

Small City Resource Manual

This easy-to-use guide helps elected and appointed officials navigate the complexities of policymaking, governance, and operational matters in a small- to medium-sized city.

So you want to be an elected official...

Cities can give this resource to prospective candidates for municipal office. The pamphlet provides general information about how to work as part of a team, what cities do, roles and responsibilities, and where to go to find more information.

53 Suggestions for Successful Public Service

Catch these quick and easy tips on how you can govern better.

Tax & User Fee Survey

Municipal water, sewer, and stormwater rates collected via member survey, compiled and posted on AWC website as an aid to benchmarking, policy discussions, and utility rate setting. Historic rates available from 2006-present.

The Ten Commandments of Community Leadership

This energizing dose of practical tips gives local leaders a framework for making decisions and taking actions based on what is right for their communities.

Washington State Public Employer Overtime Guide – FLSA

The Overtime Guide outlines the major provisions of the Fair Labor Standards Act (FLSA) and Washington Minimum Wage Act. It provides practical advice to public employers for compliance with these complex laws and minimizing overtime liability.

Washington City & County Employee Salary & Benefit Survey

Comprehensive salary and benefits data for over 120 job classifications from nearly every city and county. Data is collected annually and made available to those who represent management via an online reporting tool.

Appendices

Appendix 1 – Overview of statutes defining and limiting the authority of a mayor

Appendix 2 – Voting & vetoes: A guide for mayors

Appendix 3 – Public records disclosure

Appendix 4 – Open Public Meetings Act

Appendix 5 – Public hearings

Appendix 6 – Sample city council rules of procedure for mayor-council code cities

Appendix 7 – Sample procedures: Appearance of fairness and quasi-judicial hearing

Appendix 8 – Public participation: Tips for talking with the council

Appendix 9 – Meeting tips

Appendix 10 – Parliamentary procedure

Appendix 11 – Keeping out of trouble

Appendix 12 – Initiative, referendum, and recall

Appendix 13 – The mayor pro tempore

Definitions

Overview of statutes defining and limiting the authority of a mayor

Text in italics is taken directly from the state statutes (RCW) or state administrative code (WAC).

First class cities – mayor’s authority (RCW 35.22)

Currently first class cities in Washington have their government structured in accordance with their charters. Because of the variance in charter provisions, this appendix does not deal with the role of a mayor in a first class city.

Second class cities – mayor’s authority (RCW 35.23)

No second class cities in Washington operate under the council-manager form of government.

Appointment and termination authority

*The mayor shall appoint and at his or her pleasure may remove all appointive officers except as otherwise provided herein: PROVIDED, that municipal judges shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of his or her office. Every appointment or removal must be in writing signed by the mayor and filed with the city clerk.*¹

Though the mayor has broad authority to terminate employees, because such action sometimes results in litigation we recommend that the mayor review termination decisions and procedures carefully with the city attorney prior to taking action.

Authority to fill vacancies in appointive positions

Vacancies in offices other than that of mayor or city councilmember shall be filled by appointment of the mayor.

*If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed.*²

Authority over police

*The department of police in a city of the second class shall be under the direction and control of the chief of police subject to the direction of the mayor.*³

Authority to call special meetings of the city council

*Special meetings may be called by the mayor by written notice as provided in RCW 42.30.080. No ordinances shall be passed or contract let or entered into, or bill for the payment of money allowed at any special meeting.*⁴

Note that a statute in the Open Public Meetings Act also authorizes a majority of the city council to call a special meeting:

*A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering personally or by mail written notice to each member of the governing body ...*⁵

Authority to administer oaths and sign specified documents

*The mayor and the mayor pro tempore shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor or the mayor pro tempore when acting as mayor, shall sign all conveyances made by the city and all instruments which require the seal of the city.*⁶

Vacancies in council positions

*The council of a second class city may declare a council position vacant if the councilmember is absent for three consecutive regular meetings without permission of the council. In addition, a vacancy in an elective office shall occur and shall be filled as provided in RCW 42.12.*⁷

Authority to preside at city council meetings, break tie votes

*All meetings of the council shall be presided over by the mayor, or, in the mayor’s absence, by the mayor pro tempore. The mayor shall have a vote only in the case of a tie in the votes of the councilmembers.*⁸

Note that because at least four councilmember votes are required for the passage of any ordinance, resolution, or order, the mayor cannot break a tie vote on those matters, but can break a tie on other matters.

¹RCW 35.23.021, in part

²RCW 35.23.101, in part

³RCW 35.23.161, in part

⁴RCW 35.23.181

⁵RCW 42.30.080, in part

⁶RCW 35.23.191, in part

⁷RCW 35.23.101, in part

⁸RCW 35.23.201

Authority to sign and veto ordinances

Every ordinance which passes the council in order to become valid must be presented to the mayor; if the mayor approves it, the mayor shall sign it, but if not, the mayor shall return it with written objections to the council and the council shall cause the mayor's objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration five members of the council voting upon a call of yeas and nays favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without the approval of the mayor.

Every ordinance shall be signed by the mayor and attested by the clerk.⁹

Though the statutes defining the role of the mayor in a second class city are limited, it is clear that the mayor is to function as the chief executive and administrative officer of the city. The powers of the city council in a second class mayor-council city are listed primarily in RCW 35.23.440 and 35.23.452. Though the city council has many powers, it is the mayor who appoints the other officers and subordinate employees who carry out the policies adopted by the council.

Preliminary budget preparation

RCW 35.33 sets out the budget responsibilities of a mayor in a second class city or town. First, there is a definition providing that the mayor is the "chief administrative officer" of the city as that term is used in the budget statutes:

"Chief administrative officer" as used in this chapter includes the mayor of cities or towns having a mayor council form of government, ... or the budget or finance officer designated by the mayor ... to perform the functions, or portions thereof, contemplated by this chapter.¹⁰

The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's or town's next fiscal year he shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's or town's next fiscal year.¹¹

Budget message to council

In every city or town a budget message prepared by or under the direction of the city's or town's chief administrative officer shall be submitted as a part of the preliminary budget to the city's or town's legislative body at least sixty days before the beginning of the city's or town's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;*
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;*
- (3) A statement of the relation of the recommended appropriation to such policies and programs;*
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items; and*
- (5) An explanation for any recommended major changes in financial policy.*

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs.¹²

Mayor's authority to make transfers within any one fund

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's or town's chief administrative officer subject to such regulations, if any, as may be imposed by the city or town legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city or town which may be affected.¹³

⁹RCW 35.23.211, in part

¹⁰RCW 35.33.011(4)

¹¹RCW 35.33.055

¹²RCW 35.33.057

¹³RCW 35.33.121, in part

Council control over appropriations to any one fund

The city or town legislative body, upon a finding that it is to the best interests of the city or town to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance.¹⁴

The city or town council must also approve of any emergency expenditures not reasonably foreseen at the time of the filing of the preliminary budget, and such expenditures must be passed by a vote of one more than the majority of all members of the legislative body.¹⁵

Selection of mayor pro tem and authority of mayor pro tem

The members of the city council, at their first meeting each calendar year and thereafter whenever a vacancy occurs in the office of mayor pro tempore, shall elect from among their number a mayor pro tempore, who shall hold office at the pleasure of the council and in case of the absence of the mayor, perform the duties of mayor except that he or she shall not have the power to appoint or remove any officer or to veto any ordinance. If a vacancy occurs in the office of mayor, the city council shall elect a mayor, who shall serve until a mayor is elected and certified at the next municipal election.

The mayor and the mayor pro tempore shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor or the mayor pro tempore when acting as mayor, shall sign all conveyances made by the city and all instruments which require the seal of the city.¹⁶

Role of mayor in council-mayor second class city

The limited role of a mayor in a council-manager second class city is defined in RCW 35.18.200.

Emergency management

The authority of the mayor to function as the “executive head” in case of emergency or disaster is the same in all cities and towns. See the “Emergency Management” section at the end of this appendix.

¹⁴RCW 35.33.121, in part

¹⁵See RCW 35.33.081 and RCW 35.33.091

¹⁶RCW 35.23.191

Towns – Mayor’s authority RCW 35.27

Appointment and termination authority

*The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other subordinate officers and employees as may be provided for by ordinance. All appointive officers and employees shall hold office at the pleasure of the mayor and shall not be subject to confirmation by the town council.*¹⁷

A significant aspect of this statute is the unqualified power of the mayor to hire and fire all appointees and employees of the town. The town council has no power to confirm mayoral appointments, except mayoral appointments to the town planning commission (see RCW 35.63.020). This differs from the statutes governing a mayor’s appointment power in second class and code cities.¹⁸

Though the mayor has broad authority to terminate employees, because such action may result in litigation, termination decisions and procedures should be carefully reviewed with the town attorney prior to taking action.

Authority to preside at council meetings, sign warrants and contracts, and administer oaths

The mayor shall preside over all meetings of the council at which he or she is present. A mayor pro tempore may be chosen by the council for a specified period of time, not to exceed six months, to act as the mayor in the absence of the mayor. The mayor shall sign all warrants drawn on the treasurer and shall sign all written contracts entered into by the town. The mayor may administer oaths and affirmations, and take affidavits and certify them. The mayor shall sign all conveyances made by the town and all instruments which require the seal of the town.

*The mayor is authorized to acknowledge the execution of all instruments executed by the town which require acknowledgment.*¹⁹

Authority over police

*The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor.*²⁰

Authority to call special meetings of town council

*Special meetings may be called at any time by the mayor or a majority of the councilmembers, by written notice as provided in RCW 42.30.080.*²¹

An overlapping statute on this issue is found in the Open Public Meetings Act:

*A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering personally or by mail written notice to each member of the governing body ...*²²

Authority to preside at council meetings and break tie votes

*The mayor shall preside at all meetings of the council. The mayor shall have a vote only in case of a tie in the votes of the councilmember. In the absence of the mayor the council may appoint a president pro tempore; in the absence of the clerk, the mayor or president pro tempore, shall appoint one of the councilmembers as clerk pro tempore.*²³

Note that a mayor’s vote cannot be used to break a tie vote on passage of any resolution or order for the payment of money or for the passage of an ordinance or resolution granting a franchise (RCW 35.27.270, RCW 35.27.330).

¹⁷RCW 35.27.070, in part

¹⁸See RCW 35.23.021 and RCW 35A.12.090

¹⁹RCW 35.27.160

²⁰RCW 35.27.240

²¹RCW 35.27.270

²²RCW 42.30.080

²³RCW 35.27.280

Requirement that mayor sign ordinances – no veto power

*Every ordinance shall be signed by the mayor and attested by the clerk.*²⁴

Note that the mayor in a town does not have authority to veto ordinances passed by the town council. The mayor is required to sign all ordinances passed by the council, even those with which he disagrees. The signing of ordinances by the mayor is a ministerial act.

Budget responsibilities

The budget responsibilities of a town mayor are the same as those for the mayor in a second class city. Refer to above section on second class cities.

Selection and authority of mayor pro tem

A mayor pro tempore may be chosen by the council for a specified period of time, not to exceed six months, to act as the mayor in the absence of the mayor.²⁵

Emergency management

The authority of the mayor to function as the “executive head” in case of emergency or disaster is the same in all cities and towns. See the “Emergency Management” section at the end of this appendix.

Powers of the council

The specific powers of the town council are listed in RCW 35.27.370 and in the subsequent statutes of RCW 35.27. As mentioned above in regard to second class cities, the mayor and the individuals appointed and hired by the mayor are responsible for carrying out the policies adopted by the council.

²⁴RCW 35.27.290

²⁵RCW 35.27.160

Mayor-council code cities – Mayor’s authority

RCW 35A.12

Residency requirement for mayor and councilmembers

No person shall be eligible to hold elective office under the mayor council plan unless the person is a registered voter of the city at the time of filing his declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his election. Residence and voting within the limits of any territory which has been included in, annexed to, or consolidated with such city is construed to have been residence within the city.²⁶

Prohibition on holding any other office or employment

A mayor or councilman shall hold within the city government no other public office or employment except as permitted under the provisions of RCW 42.23.²⁷

Oath of office

The mayor and councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance.²⁸

Filling vacancy in office of mayor or councilmember

The office of a mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or 42.12.010. A vacancy in the office of mayor or in the council shall be filled as provided in RCW 42.12.²⁹

Appointment and termination authority

The mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service. The head of a department or office of the city government may be authorized by the mayor to appoint and remove subordinates in such department or office, subject to any applicable civil service provisions. All appointments of city officers and employees shall be made on the basis of ability and training or experience of the appointees in the duties they are to perform, from among persons having such qualifications as may be prescribed by ordinance or by charter, and in compliance with provisions of any merit system applicable to such city. Confirmation by the city council of appointments of officers and employees shall be required only when the city charter, or the council by ordinance, provides for confirmation of such appointments. Confirmation of mayoral appointments by the council may be required by the council in any instance where qualifications for the office or position have not been established by ordinance or charter provision. Appointive offices shall be without definite term unless a term is established for such office by law, charter or ordinance.³⁰

The above-quoted statute gives to mayors in mayor-council code cities sole authority to terminate city appointive officers and employees (subject to any applicable civil service rule or subject to any other specific statute). The statute does, however, allow the city council to provide for confirmation of mayoral appointments if the council has not previously established specific qualifications for the position through passage of an ordinance. If the council has established qualifications for a particular position, then those qualifications act as a limitation of the mayoral appointment authority. Note that in order to take advantage of this statutory authority, the council must first pass an ordinance providing for such confirmation powers.

Though the mayor has broad authority to terminate employees, because such action may result in litigation, termination decisions and procedures should be carefully reviewed with the city attorney prior to taking action.

²⁶RCW 35A.12.030, in part

²⁷RCW 35A.12.030, in part

²⁸RCW 35A.12.040, in part

²⁹RCW 35A.12.050

³⁰RCW 35A.12.090

General administrative authority

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests.³¹

Approval of official bonds, contract enforcement, instituting litigation

All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he may designate for approval or disapproval. He shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council.³²

Presiding at council meetings, casting tie-breaking votes, reports to council, preparation of proposed budget, veto power

The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmember with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He shall prepare and submit to the council a proposed budget, as required by RCW 35A.33. The mayor shall have the power to veto ordinances passed by the council and submitted to him as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote.³³

The tie-breaking power of the mayor has generated confusion, partly because of the phrase “a tie in the votes of the councilmember with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money.” Clearly the mayor cannot break a tie vote on an ordinance; nor can the mayor break a tie vote on the granting or revoking of a franchise or license.

MRSC has interpreted the phrase “resolution for the payment of money” quite narrowly, limiting it to resolutions such as those approving the payment of vouchers or other city claims. That narrow interpretation means that the mayor can cast the tie-breaking vote on a resolution concerning matters such as whether to proceed with a specific public works project, which will at a later date result in the expenditure of city funds. There are no state appellate court cases or Attorney General opinions which provide guidance on this issue.

Ceremonial role

The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.³⁴

Authority to call special meetings of city council

Special meetings may be called by the mayor or a majority of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting.³⁵

Mayoral authority to call a special meeting is also provided by one of the statutes in the Open Public Meetings Act: *A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering personally or by mail written notice to each member of the governing body...³⁶*

³¹RCW 35A.12.100

³²RCW 35A.12.100, in part

³³RCW 35A.12.100, in part

³⁴RCW 35A.12.100, in part

³⁵RCW 35A.12.110

³⁶RCW 42.30.080, in part

Preparation of preliminary budget

RCW 35A.33 sets out the responsibilities of the mayor in a code city in regard to budgeting. By definition, the term “chief administrative officer” as used in the budget statutes refers to the mayor in a code city operating under the mayor-council form of government:

“Chief administrative officer” as used in this chapter includes the mayor of cities having a mayor council form of government, the commissioners in cities having a commission form of government, the city manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.³⁷

The chief administrative officer (mayor) is required to prepare the preliminary budget in detail and submit it by a certain date.

The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's next fiscal year he shall file it with the city clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal year.³⁸

Budget message to council

In every code city, a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;*
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;*
- (3) A statement of the relation of the recommended appropriation to such policies and programs;*
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items; and*
- (5) An explanation for any recommended major changes in financial policy.*

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs.³⁹

Expenditure limitations

The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the code city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

- (1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW 35A.33.105; and*
- (2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW 35A.33.150; and*
- (3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and*
- (4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and*
- (5) Expenditures required for emergencies, as authorized in RCW 35A.33.080 and 35A.33.090.⁴⁰*

³⁷RCW 35A.33.010(4)

³⁸RCW 35A.33.052

³⁹RCW 35A.33.055

⁴⁰RCW 35A.33.120, in part

Transfers between individual appropriations within any one fund

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city council. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city which may be affected.⁴¹

Council control over appropriations to any one fund

The city council, upon a finding that it is to the best interests of the code city to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance.⁴²

The budget responsibilities for mayors in mayor-council code cities operating under a biennial budget process are similar, but with a different timetable.⁴³

Appointment and authority of mayor pro tem

Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability.⁴⁴

Note that unlike RCW 35.23.191, which defines the role of a mayor pro tem in a second class mayor-council city, RCW 35A.12.065 does not specifically limit the power of the mayor pro tem to appoint or remove officers, or to veto ordinances. This has led to some confusion concerning the powers of a mayor pro tem in a code city, and several code cities have passed ordinances specifically limiting the power of a mayor pro tem to appoint and remove officers or to veto ordinances.

Emergency management

The authority of the mayor to function as the "executive head" in case of emergency or disaster is the same in all cities and towns. See the "Emergency Management" section at the end of this appendix.

⁴¹RCW 35A.33.120, in part

⁴²RCW 35A.33.120, in part

⁴³See RCW 35A.34.080 and RCW 35A.34.090

⁴⁴RCW 35A.12.065

Emergency management – all cities & towns

In all cities and towns the mayor is the “executive head” who is authorized to take charge when there is an emergency or disaster.⁴⁵ All cities are directed to establish a local organization for emergency management and adopt an emergency management plan which is certified as being consistent with the state emergency management plan.⁴⁶ Chapter 118 in the Washington Administrative Code (WAC) contains the rules adopted by the State Division of Emergency Management which apply to all municipalities. Because each city and town has its own unique situation, emergency plans vary considerably. While some cities have chosen to establish emergency management director positions and have delegated extensive authority to those individuals, many smaller cities have chosen to coordinate their plan with the county and rely heavily upon the county for assistance in the event of an emergency.

Emergency management ordinance/resolution.

Each political subdivision must establish an emergency management organization by ordinance or resolution passed by the legislative body of the political subdivision. Two or more political subdivisions may join in the establishment of an emergency management organization.

- (1) Each political subdivision must establish said organization by ordinance or resolution.*
- (2) Each political subdivision shall specify in the ordinance or resolution establishing the organization, how the costs of supporting the organization shall be shared between the constituent political subdivision.*
- (3) If two or more political subdivisions cannot agree on the sharing of costs to support the emergency management organization established by the constituent political subdivisions, the director shall refer the matter to the council. The council shall consider the matter at either a regular or special meeting. The council may request additional information from the constituent political subdivisions, the director, or other interested party(s). The council shall arbitrate the matter, and its decision shall be final.*

- (4) When two or more political subdivisions submit ordinances or resolutions establishing a single emergency management organization which meets the criteria set forth, the director shall inform the executive heads of the constituent political subdivisions that the emergency management organization is acceptable and authorized. Nothing in this code shall prevent one or more political subdivisions from contracting with another subdivision for emergency management activities under the provisions of chapter 39.34 RCW, the Interlocal Cooperation Act.*
- (5) Each political subdivision must specify in the ordinance or resolution establishing the emergency management organization, that the agency shall be headed by a director of emergency management who shall be appointed by and directly responsible to the executive head of the political subdivision.*
- (6) In the case of an emergency management organization established by two or more political subdivisions, such political subdivisions shall specify in the ordinance or resolution establishing the organization, that the local government agency shall be headed by a local director of emergency management who shall be appointed by the joint action of the executive heads of the constituent political subdivisions. The political subdivisions shall specify by ordinance or resolution that the emergency management director shall be directly responsible to the executive authority of the constituent political subdivisions.*
- (7) Each political subdivision shall specify by ordinance or resolution that the local director of emergency management shall be directly responsible for the organization, administration, and operation of the emergency management organizations.*
- (8) Each political subdivision shall submit a copy of the ordinance or resolution establishing its emergency management organization to the director for evaluation and approval of the organizational plan or structure.*
- (9) Such ordinance or resolution shall constitute an approved organization for the purposes of RCW 38.52.195 and 38.52.260(2). Use of emergency workers is governed by chapter 118-04 WAC.⁴⁷*

⁴⁵RCW 38.52.010(9) and WAC 118.30.030(5)

⁴⁶RCW 38.52.070(1)

⁴⁷WAC 118.30.050

Read your city's or town's emergency management plan thoroughly. If you have questions concerning your role and authority, review the plan with your city or town attorney. If you feel that changes should be made, review proposed amendments with your council.

The state legislature has granted broad authority to cities and towns to take all necessary action to deal with a disaster:

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.⁴⁸

⁴⁸RCW 38.52.070(2)

Voting & vetoes – A guide for mayors

Quorum

The general rule governing the transaction of council business is that a majority of councilmembers must be present at the meeting to constitute a quorum. This means four members of a seven-member council and three members of a five-member council.

The mayor's authority to vote

Charter

In charter cities, each city charter governs the voting powers of the mayor.

Mayor-council

Under the mayor-council form of government, the mayor may vote only in case of a tie vote of the council. However, statutes for each class of city may further limit the mayor's tie-breaking authority, as follows:

- **Second class cities.** Because at least four councilmember votes are required for the passage of any ordinance, resolution, or order (RCW 35.23.211), the mayor cannot break a tie vote on those matters.
- **Towns.** At least three councilmembers must vote for passage of any resolution or order for the payment of money (RCW 35.27.270) or for the passage of an ordinance or resolution granting a franchise (RCW 35.27.330). Thus, the mayor's vote cannot be used to break a tie vote on these issues.
- **Code cities.** A majority of the entire membership of the council is required to vote for passage of any ordinance, grant, revocation of franchise or license, or any resolution for the payment of money (RCW 35A.12.120). Therefore, the mayor may not break a tie vote on these matters.

Council-manager

In all cities operating under the council-manager form of government, the mayor is eligible to vote in his or her capacity as councilmember.

The mayor's veto power

- **Council-manager cities.** The mayor votes as a councilmember and has no veto power.
- **Second class mayor-council cities.** The mayor may veto an ordinance, but the mayor's veto can be overruled by five members of the council (RCW 35.23.211).
- **Towns.** The mayor has no veto power.
- **Mayor-council code cities.** The mayor may veto an ordinance, but the mayor's veto can be overruled by a majority plus one of the entire council membership (RCW 35A.12.100).

Abstentions

In the absence of a local statute to the contrary, councilmembers are free to abstain from voting on any issue before the council. Some cities have adopted local rules of procedure allowing abstentions only when the councilmember states his or her reason for abstaining. Other cities require councilmembers to vote on all matters before the council unless a conflict of interest exists. When a conflict of interest exists, a councilmember should refrain from voting. Generally, however, other councilmembers cannot restrain a councilmember from voting due to a conflict of interest or for any other reason.

The effect of an abstention on a vote is not specified by state law. Municipalities are free to adopt local rules of procedure stating the effect of an abstention. See Appendix 5, Sample City Council Rules of Procedure (Rule 5.4) for an example of a rule which provides that failure to vote when there is no valid disqualification is counted as an affirmative vote on the question. If a city does not have a rule, abstentions by one or more councilmembers may make it impossible for final action to be taken on a matter, particularly where a majority vote of the full council is needed.

Voting by proxy

It is a fundamental rule of parliamentary law that the right to vote is limited to those members actually present at the time a vote is taken at a legal meeting. State law is silent as to proxy voting by councilmembers. As a general rule, proxy votes are not permitted. If the city or town has not adopted a rule of procedure to the contrary, councilmembers must be present at the time the vote is taken. There is no Washington court case law on this issue. Participation by speaker phone is a possible alternative; discuss this issue with your city attorney.

Questions & answers

Q. If there is a quorum at the start of a council meeting but one of the councilmembers gets ill and has to leave, eliminating the quorum, can the meeting continue?

A. No. The council meeting must either be closed or adjourned to a stated date and time.

Q. Who, if anyone, can make a motion to reconsider where a matter was defeated by a tie vote?

A. Under Robert's Rules, §36, anyone on the prevailing (winning) side of a vote can make a motion to reconsider, and the prevailing side need not be a majority, such as when a tie vote functions to defeat a matter. In that case, those who voted "no" would be entitled to make the motion to reconsider. (If an ordinance was passed at one meeting, it cannot be reconsidered, although it could, of course, be amended or repealed.)

Q. Can the mayor make and second motions, and debate issues with the council?

A. In council-manager cities the mayor has the same rights to make motions and debate issues as any other councilmember. There is no statute concerning this issue in regard to mayors in mayor-council cities. The councils in mayor-council cities can adopt rules restricting the authority of the mayor to make or second motions, and require the mayor to turn over the running of the meeting to a councilmember if he or she wishes to vigorously participate in the debate of an issue. (See Appendix 5, Sample City Council Rules of Procedure, Rule 3.6.)

Public records disclosure

The public records disclosure law deals with the public's right to inspect and/or copy public records (RCW 42.56). These state statutes were designed to insure public confidence in government by allowing full access to information concerning the administration and conduct of government.

The definition of "public record" is quite broad. A public record includes "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics" (RCW 42.56.010(3)). Papers, photos, maps, videos, and electronic records are all covered by the state law.

As a general rule, all city records are available for review by the public, unless they are specifically exempted or prohibited from disclosure by state law. Because the public records disclosure statutes are sometimes difficult to interpret and are often a source of litigation, MRSC has prepared a publication which reviews all of the relevant statutes, exemptions and prohibitions to disclosure, and procedures to be followed when handling a request for disclosure. (See Public Records Act for Washington Cities, Counties, and Special Purpose Districts, and MRSC and OPMA and PRA practice tips and checklists webpage, MRSC).

Frequently asked questions

Q. How soon must a city respond to a request for public records?

A. State law requires that responses to requests for public records be made "promptly." Specifically, cities must respond within five business days of receiving a request by either (1) providing the record, (2) acknowledging receipt of the record and providing a reasonable estimate of the time in which a response will be made, (3) denying the request, or 4) request clarification of a request, coupled with giving an estimated response time if the request is not clarified. Additional response time beyond five days may be based upon a need to clarify the request, to locate and assemble the records requested, to notify people and agencies affected by the request, or to determine whether any of the requested records are exempt from disclosure (RCW 42.56.520).

Q. What can a city charge for providing copies of public records?

A. Cities are not allowed to charge for the staff time spent in locating a public record, or for making a record available for inspection. A city can, however, charge for the actual costs connected with copying public records, including

the staff time spent making the copies. A city cannot charge more than fifteen cents a page for photocopying unless the city has calculated its actual costs per page and determined that they are greater than fifteen cents. Actual costs for postage and delivery can be included, as well as the cost of any envelopes. If a city has to pay an outside source for making duplicates of records such as photographs, blueprints or tape recordings, the city can also pass those costs on to the requestor (RCW 42.56.070(7) and RCW 42.36.120).

Additionally, cities are now expressly authorized to charge for copying and producing electronic records. A city can charge actual costs incurred for providing electronic copies, including costs related to production, file transfer, storage, and transmission. If a policy establishes that calculating actual costs would be unduly burdensome, then the following default charges may be charged: ten cents/page for records scanned into electronic format, five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system, and ten cents/gigabyte for transmitting records electronically (EHB 1595).

Q. What constitutes a public record?

A. The state statutes broadly define public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics" (RCW 42.56.010).

The term "writing" encompasses a wide range of communication forms or representation. Writing includes, but is not limited to, any form of letters, words, pictures, sounds, or symbols and all papers, maps, tapes, films, prints, motion picture, film, and video recordings (RCW 42.56.010).

Some records held by volunteers are excluded from the definition, if the volunteers meet certain stated conditions (they do not serve in an administrative capacity; have not been appointed by the city to an agency board, commission, or internship; and do not have a supervisory role or delegated agency authority.)

Q. Does a councilmember have greater access to public records than the public?

A. As a general rule, a councilmember has greater access to public records than does the public. However, a councilmember's access should relate to the duties of that office.

Q. What public records are exempt from disclosure?

A. Public records exemptions from public disclosure are contained primarily in RCW 42.56.210-42.56.640. Reference must be made to this statute to determine on a case-by-case basis whether a particular record is exempt.

Q. Are employment applications exempt from disclosure?

A. Yes, such applications are exempt from disclosure, including the names of applicants, resumes, and other material related to the applications (RCW 42.56.250). Although the statutory exemption does not specifically refer to applications for public appointive office, its legislative history indicates that it was intended to also apply to applicants for offices, such as the office of city manager or city clerk.

Q. Is personal information contained in employee personnel files exempt from disclosure?

A. It depends on the nature of the information in these records. RCW 42.56.230 exempts such records "to the extent disclosure would violate [the employee's] right to privacy." What constitutes a violation of a person's right to privacy is defined by statute to mean the disclosure of information that would be (1) "highly offensive to a reasonable person" and (2) "not of legitimate concern to the public" (RCW 42.56.050). This is a stringent test, and it's unlikely that most records found in personnel files would meet this test. Consult your attorney for further guidance.

Q. Must a city disclose records which reveal the salary and benefits that a particular employee or official receives?

A. Yes. There is no disclosure exemption that applies to such records.

Q. Must a city disclose utility billing records?

A. Yes, except for billing information in increments less than a billing cycle. No other exemption applies. However, the city should not disclose the residential addresses, telephone numbers, or additional contact information and permit meter data of utility customers that may be contained in such records (RCW 42.56.330).

Q. Must the city track the public records requests it receives?

A. Yes. Cities are required to maintain a log that identifies the requestor (if provided), the date and text of request, a description of records produced in response to request, a description of records redacted or withheld and the reasons for redaction/withholding, and the date of final disposition of the request.

Q. Must a city respond to a request for "all records"?

A. A city may deny a request for all or substantially all records not relating to a particular topic. Additionally, a city can also deny automatically generated (bot) requests received from the same requestor within a 24-hour period, if the requests cause excessive interference with the other essential functions.

Q. Must a city provide public records if they are being requested for commercial purposes?

A. In addition to the statutory exemptions from disclosure that a city must consider in responding to a particular request, a city is prohibited from providing or giving access to "lists of individuals" if requested for commercial purposes (RCW 42.56.070). The Attorney General's Office has interpreted this provision to refer only to lists of natural persons, rather than, for example, to lists of businesses. Public records other than "lists of individuals" requested for commercial purposes should be provided upon request if they are not statutorily exempt from disclosure.

Q. Are emails on city business sent from a personal email account of an elected or appointed city official subject to disclosure under the Public Records Act?

A. Yes, emails that pertain to city business that are sent by city appointed or elected officials are potentially subject to disclosure under the PRA even if they are sent from the private email account of the official. That is because the term public record includes any email that relates to the conduct of government or performance of any governmental or proprietary function sent by a city official or employee, even if that email is sent from their private email account. It is subject to disclosure unless protected by one of the exemptions in the PRA itself. In addition, text messages and voicemails on a personal device may be public record subject to disclosure.

Open Public Meetings Act

General rule

The general rule for open public meetings, with only a few minor exceptions, is that all meetings of the governing bodies of public agencies are to be open and accessible to the public. Not only must ordinances and rules be adopted at public meetings in order to be valid, but deliberations must be conducted openly and all members of the public must be allowed to attend (RCW 42.30, Open Public Meetings Act).

A summary of open public meeting requirements is provided here. For a more complete discussion, review the MRSC publication, *The Open Public Meetings Act: How it Applies to Cities, Counties and Special Purpose Districts*.

What meetings are covered?

The Open Public Meetings Act applies to nearly all meetings of public agency governing bodies, including cities. This includes regular and special meetings of all multi-member governing bodies and subagencies (city councils, planning commissions, library or park boards, etc.). The Act applies to the meetings of committees, subcommittees, and other groups created by a governing body pursuant to its executive authority when they act on behalf of the governing body, conduct hearings, or take public testimony, whether the committee is composed of members of the governing body or not (Attorney General Opinion, 1986 AGO No. 16).

Because the Act is to be liberally construed, meaning that courts will lean towards including borderline meetings, the Act should be assumed to apply unless the meeting is of a type specifically excluded by statute.

The fact that a meeting is called a workshop, study session, or retreat does not mean it may be automatically closed to the public.

What meetings are not covered?

Several types of local government meetings are not covered under the Open Public Meetings Act:

- Quasi-judicial proceedings are excluded, where the decision being made affects only individual rights and not the general public.
- Committee meetings are excluded when they do not exercise actual or implied decision-making power, unless they are comprised of a majority of the members of a governing body. The Attorney General's office and an appellate court in Washington have taken the position that a committee does not fall into this category when its powers are only advisory.

- Social gatherings are excluded, as long as the attendees do not take any official action or discuss the business of the governing body.
- Certain proceedings for licensing and disciplinary action and meetings for formulating collective bargaining strategies.

Executive sessions (RCW 42.30.110)

Executive sessions are portions of regular or special meetings that may be closed to the public. Only specific issues may be considered, where public disclosure would harm individual interests or legitimate interests of the governing body. An executive session may be held in the following cases:

- To consider the selection of a site or the acquisition of real estate when public knowledge would cause likelihood of increased price;
- To consider the minimum price at which real estate will be offered for sale or lease when public knowledge would cause a likelihood of decreased price;
- To receive and evaluate complaints or charges brought against a public officer or employee. Note however, upon the request of the officer or employee, a public hearing or meeting open to the public must be conducted upon the complaint;
- To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee;
- To evaluate the qualifications of a candidate for appointment to elective office, such as when filling a councilmanic vacancy. However, the interview of the candidate and final action must be in an open meeting;
- To discuss with legal counsel representing the agency, matters relating to agency enforcement actions, or litigation or potential litigation to which the agency is a party.

An executive session may be held during any regular or special meeting. Before convening the executive session, the presiding officer is to publicly announce the purpose for excluding the public and the time when the executive session will be concluded.

Requirements for notice of meetings

The public must be informed of the time and place of meetings, both “regular” meetings and “special” meetings, except in emergencies.

- Regular meetings are recurring meetings with a time and place fixed by ordinance or rule. “Workshop” meetings of the council, if routinely held at a time and place set by ordinance, are still “regular” meetings and are subject to the Open Public Meetings Act.
- Special meetings, called by the presiding officer or a majority of the members, must be announced in writing to all members of the governing body and members of the news media who have requested notice (RCW 42.30.080). Special meeting notices must be delivered personally or by mail, fax, or electronic mail 24 hours in advance and posted on a website and prominently displayed, specifying the time and place of the meeting and the business to be

transacted. Only business described in the special meeting notice can be decided, although other business can be discussed. Many cities provide notice to the public when special meetings are called if there is enough time. For instance, some cities post notice of special meetings at several places in the city, and some cities publish notice in the local newspaper.

Conclusion

The requirements of the Open Public Meetings Act are pervasive and relatively inflexible. In deciding to hold a closed meeting, local officials should be prepared to justify the decision under a specific exemption. Officials should be alert to situations where the Open Public Meetings Act could be inadvertently violated, such as social settings, public hearings, and council retreats and workshops.

Additional resources

The Open Public Meetings Act, How it Applies to Washington Cities, Counties, and Special Purpose Districts, MRSC

OPMA and PRA practice tips and checklists webpage, MRSC

Frequently asked questions

Q. What can be done if a meeting becomes disorderly?

A. The mayor should instruct audience members on rules of courtesy; if rules are not followed, the speaker may lose the right to speak at the meeting or even be ejected for disorderly conduct. The meeting may be adjourned temporarily or moved to another location if order cannot be restored by removal of the disorderly individuals.

Q. What if a majority of the city council get together for coffee every week at the local coffee shop? Is that considered a public meeting?

A. No, not unless city business is discussed. Use extreme caution though; if a majority of the council is seen together, the public may assume that city business is the topic, and allege a violation has occurred.

Q. What happens if the Open Public Meetings Act is violated?

A. There are several potential consequences for violating the procedural requirements of the Open Public Meetings Act. Most importantly, actions taken in meetings that violate the Act are null and void, including the passing of ordinances and resolutions. In addition, knowing attendance by a member at an improperly held meeting is punishable by a civil fine of \$500 for the first violation and \$1,000 for subsequent violations. The party that prevails in an action for violation of the Act may recover reasonable expenses and attorneys’ fees under certain circumstances.

Q. If a majority of the city council are included on an email related to city business, is the Open Public Meetings Act violated?

A. Yes, there likely is a violation of the OPMA if a quorum of the city council exchange emails in which they discuss public business. However, if one member emails the other members to share relevant information but there is no exchange of information, then likely there is no OPMA violation. In other words, if there is just passive receipt of the email, there has been no meeting. It is the exchange of emails or dialogue between the councilmembers that triggers the likelihood of an OPMA violation.

Public hearings

The principal difference between council meetings and public hearings is their purpose and the public participation requirement. The two types of proceedings may seem similar to an outsider, but council meetings are conducted primarily to make decisions, while public hearings are held to gather the data and opinions from the public that facilitate the decision-makers at the council meeting.

What is the difference between a public meeting and a public hearing?

In Washington, all meetings of governmental bodies at which decisions are made are public meetings, under the Open Public Meetings Act. At a public meeting, anyone may attend the meeting and observe.

A governmental body may permit public participation; however, there is no right of the public neither to participate in the course of a public meeting nor to comment on the subject matter being considered by the governmental body. In contrast, during a public hearing, the public is invited to speak to the council and the council primarily listens and receives public input. No decisions are made during a public hearing.

A public hearing may be held as part of a regularly scheduled public meeting, but the two phases are conducted separately.

When is a public hearing required?

There are relatively few situations that actually require a public hearing, although there are many occasions when public hearings may be advisable. The most typical circumstances requiring public hearings are listed below.

Annexation proceedings

- Direct petition method of annexation

Budget process

- Following preliminary budget filing
- Emergency expenditures

Planning and zoning

- Adoption or amendment of a comprehensive plan
- Adoption or amendment of a zoning code

Street vacations

Local improvement districts

- Creation of a local improvement district
- Development of the assessment role
- Assessment of an omitted property

Arterial street construction

Sale of public utility property

Creation of a parking and business improvement area

Approval of preliminary plats

Removal of city manager (if requested)

What is the required notice for public hearings?

For some types of public hearings, there are specific statutory provisions containing notice requirements. Many of the public hearing statutes listed above include notice requirements. Where no specific statutory standards regarding notice are provided, each city must establish a procedure for notifying the public of upcoming hearings. The procedures may include written notification to the city's official newspaper, publication of a notice in the official newspaper, and such other processes as the city determines will satisfy the notice requirement.

What rules govern a public hearing?

The governing body holding the public hearing may establish rules of procedure for its conduct. These rules may include limiting the time allowed for public presentations, as long as they are reasonable and fair. At the commencement of the hearing, the rules that will govern should be explained. The same quorum rules for public meetings apply to public hearings: a quorum of the decision-making body is required for the transaction of business.

Sample city council rules of procedure for mayor-council code cities

MRSC has on file numerous examples of council rules of procedures from both mayor-council and council-manager cities. This sample is not a “model” which we are recommending. We suggest that you review the rules printed here as well as other examples. Some cities have more detailed rules. You can review and download additional sets of rules of procedure through the MRSC web site, or contact the MRSC library to borrow additional sample rules.

City council rules of procedure

1. General rules

- 1.1 Meetings to be public:** All official meetings of the council shall be open to the public with the exception of executive sessions for certain limited topics (as defined in RCW 42.30). The journal of proceedings (minute book) shall be open to public inspection.
- 1.2 Quorum:** Four councilmembers shall be in attendance to constitute a quorum and be necessary for the transaction of business. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time, but no adjournment shall be for a longer period than until the next regular meeting.
- 1.3 Attendance, excused absences:** RCW 35A.12.060 provides that a councilmember shall forfeit his/her office by failing to attend three (3) consecutive regular meetings of the council without being excused by the council. Members of the council may be so excused by complying with this section. The member shall contact the chair prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the chair, the member shall contact the city clerk or deputy city clerk, who shall convey the message to the chair. The chair shall inform the council of the member's absence, state the reason for such absence and inquire if there is a motion to excuse the member. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the recorder will make an appropriate notation in the minutes. If the motion is not passed, the recorder will note in the minutes that the absence is unexcused.

1.4 Journal of proceedings: A journal of all proceedings of the council shall be kept by the city clerk and shall be entered in a book constituting the official record of the council.

1.5 Right of floor: Any member desiring to speak shall be recognized by the chair and shall confine his/her remarks to one subject under consideration or to be considered.

1.6 Rules of order: Robert's Rules of Order Newly Revised shall be the guideline procedures for the proceedings of the council. If there is a conflict, these rules shall apply.

2. Types of meetings

2.1 Regular council meetings: The council shall meet on the ___ of each month at 7 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.

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 give at least 24 hours' notice of the special meeting to each local newspaper of general circulation and to each local radio and/or television station which has filed with the clerk a written request to be notified of special meetings. No subjects other than those specified in the notice shall be considered. The council may not make final disposition on any matter not mentioned in the notice.

Special meetings may be called in less than 24 hours, and without the notice required in this section, to deal with emergencies involving injury or damage to persons or property or the likelihood of such injury or damage if the notice requirements would be impractical or increase the likelihood of such injury or damage.

2.3 Continued and adjourned sessions: Any session of the council may be continued or adjourned from day to day, or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting.

2.4 Study sessions and workshops: The council may meet informally in study sessions and workshops (open to the public), at the call of the mayor or of any three or more members of the council, to review forthcoming programs of the city, receive progress reports on current programs or projects, receive other similar information from city department heads or conduct procedures workshops, provided that all discussions and conclusions thereon shall be informal and do not constitute official actions of the council. Study sessions and workshops held by the council are "special meetings" of the council, and the notice required by RCW 42.30.080 must be provided.

2.5 Executive sessions: Executive sessions or closed meetings may be held in accordance with the provisions of the Washington State Open Meetings Act (RCW 42.30). Among the topics that may be discussed are: (1) personnel matters; (2) consideration of acquisition of property for public purposes or sale of city-owned property; and (3) potential or pending litigation in which the city has an interest, as provided in the Revised Code of Washington. The council may hold an executive session during a regular or special meeting. Before convening in executive session the chair shall publicly announce the purpose for excluding the public from the meeting place and the time when the executive session will be concluded. If the council wishes to adjourn at the close of a meeting from executive session, that fact will be announced along with the estimated time for the executive session. The announced time limit for executive sessions may be extended to a stated later time by the announcement of the chair.

2.6 Attendance of media at council meetings: All official meetings of the council and its committees shall be open to the media, freely subject to recording by radio, television and photographic services at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings.

3. Chair and duties

3.1 Chair: The mayor, if present, shall preside as chair at all meetings of the council. In the absence of the mayor, the mayor pro tem shall preside. In the absence of both the mayor and mayor pro tem, the council shall elect a chair.

3.2 Call to order: The meetings of the council shall be called to order by the mayor or, in his absence, by the mayor pro tem. In the absence of both the mayor and mayor pro tem, the meeting shall be called to order by the city clerk or Clerk's designee for the election of a temporary chair.

3.3 Preservation of order: The chair shall preserve order and decorum, prevent attacks on personalities or the impugning of members' motives and confine members in debate to the question under discussion.

3.4 Points of order: The chair shall determine all points of order, subject to the right of any member to appeal to the council. If any appeal is taken, the question shall be "Shall the decision of the chair be sustained?"

3.5 Questions to be stated: The chair shall state all questions submitted for a vote and announce the result. A roll call vote shall be taken upon all questions.

3.6 Mayor – powers: The mayor may not make or second motions, but may participate in debate to the extent that such debate does not interfere with chairing the meeting. If the mayor wishes to participate vigorously in the debate of an issue, the mayor shall turn over chairing of that portion of the meeting to the mayor pro tem, or to another councilmember if the mayor pro tem is absent. The mayor's voting rights and veto power are as specified in RCW 35A.12.100.

4. Order of business and agenda

4.1 Order of business: The order of business for all regular meetings shall be transacted as follows unless the council, by a majority vote of the members present, suspends the rules and changes the order:

- (1) Call to order
- (2) Pledge of allegiance
- (3) Council discussion/agenda review/set time restrictions (See Rules 6.1 and 7.4)
- (4) Comments from city residents
- (5) Consent agenda
- (6) Mayor's reports
- (7) Department head/council committee/board/commission reports
- (8) Other business
- (9) Continued comments from city residents
- (10) Councilmember comments
- (11) Adjournment

The consent agenda may contain items which are of a routine and noncontroversial nature which may include, but are not limited to, the following: meeting minutes, payroll, claims, budget amendments, park use requests and any item previously approved by council with a unanimous vote and which is being submitted to council for final approval. Any item on the consent agenda may be removed and considered separately as an agenda item at the request of any councilmember or any person attending a council meeting.

4.2 Council agenda: The mayor shall prepare the agenda for council meetings. Subject to the council's right to amend the agenda, no legislative item shall be voted upon which is not on the council agenda, except in emergency situations (defined as situations which would jeopardize the public's health, safety or welfare).

4.3 Mayor and councilmember comments and concerns: The agenda shall provide a time when the mayor ("Mayor's reports") or any councilmember ("Comments from councilmembers") may bring before the council any business that he/she feels should be deliberated upon by the council. These matters need not be specifically listed on the agenda, but formal action on such matters may be deferred until a subsequent council meeting, except that immediate action may be taken upon a vote of a majority of all members of the council. There shall be no lectures, speeches or grandstanding.

5. Consensus and motions

5.1 Consensus votes: When a formal motion is not required on a council action or opinion, a consensus voice vote will be taken. The chair will state the action or opinion and each councilmember will state his/her name and vote by saying "aye" or "nay".

5.2 Motions: No motion shall be entertained or debated until duly seconded and announced by the chair. The motion shall be recorded and, if desired by any councilmember, it shall be read by the recorder before it is debated and, by the consent of the council, may be withdrawn at any time before action is taken on the motion.

5.3 Votes on motions: Each member present shall vote on all questions put to the council except on matters in which he or she has been disqualified for a conflict of interest or under the appearance of fairness doctrine. Such member shall disqualify himself or herself prior to any discussion of the matter and shall leave the council chambers. When disqualification of a member or members results or would result in the inability of the council at a subsequent meeting to act on a matter on which it is required by law to take action, any member who was absent or who had been disqualified under the appearance of fairness doctrine may subsequently participate, provided such member first shall have reviewed all materials and listened to all tapes of the proceedings in which the member did not participate.

5.4 Failure to vote on a motion: Any councilmember present who fails to vote without a valid disqualification shall be declared to have voted in the affirmative on the question.

5.5 Motions to reconsider: A motion to reconsider must be made by a person who voted with the majority on the principal question and must be made at the same or succeeding regular meeting. No motion to reconsider an adopted quasi-judicial written decision shall be entertained after the close of the meeting at which the written findings were adopted.

6. Public hearing procedures

6.1 Speaker sign-in: Prior to the start of a public hearing the chair may require that all persons wishing to be heard sign in with the recorder, giving their name and whether they wish to speak as a proponent, opponent or from a neutral position. Any person who fails to sign in shall not be permitted to speak until all those who signed in have given their testimony. The chair, subject to the concurrence of a majority of the council, may establish time limits and otherwise control presentations. (Suggested time limit is three minutes per speaker or five minutes when presenting the official position of an organization or group.) The chair may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, etc.).

6.2 Conflict of interest/Appearance of fairness: Prior to the start of a public hearing the chair will ask if any councilmember has a conflict of interest or Appearance of Fairness Doctrine concern which could prohibit the councilmember from participating in the public hearing process. A councilmember who refuses to step down after challenge and the advice of the city attorney, a ruling by the mayor or chair and/or a request by the majority of the remaining members of the council to step down is subject to censure. The councilmember who has stepped down shall not participate in the council decision nor vote on the matter. The councilmember shall leave the council chambers while the matter is under consideration, provided, however, that nothing herein shall be interpreted to prohibit a councilmember from stepping down in order to participate in a hearing in which the councilmember has a direct financial or other personal interest.

6.3 The public hearing process: The chair introduces the agenda item, opens the public hearing and announces the following Rules of Order:

- (1) All comments by proponents, opponents or other members of the public shall be made from the podium; any individuals making comments shall first give their name and address. This is required because an official recorded transcript of the public hearing is being made.

- (2) No comments shall be made from any other location. Anyone making "out of order" comments shall be subject to removal from the meeting. If you are disabled and require accommodation, please advise the recorder.
- (3) There will be no demonstrations during or at the conclusion of anyone's presentation.
- (4) These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and to ensure that no individual is embarrassed by exercising his/her right of free speech.
 - The chair calls upon city staff to describe the matter under consideration.
 - The chair calls upon proponents, opponents and all other individuals who wish to speak regarding the matter under consideration.
 - The chair inquires as to whether any councilmember has questions to ask the proponents, opponents, speakers or staff. If any councilmember has questions, the appropriate individual will be recalled to the podium.
 - The chair continues the public hearing to a time specific or closes the public hearing.

7. Duties and privileges of community members

7.1 Meeting participation: The public is welcome at all council meetings and are encouraged to attend and participate prior to the deliberations of the council. Recognition of a speaker by the chair is a prerequisite and necessary for an orderly and effective meeting, be the speaker an attendee, councilmember or staff member. Further, it will be expected that all speakers will deliver their comments in a courteous and efficient manner and will speak only to the specific subject under consideration. Anyone making out-of-order comments or acting in an unruly manner shall be subject to removal from the meeting. Use of cellular telephones is prohibited in the council chambers.

7.2 Subjects not on the current agenda: Under agenda item “Comments from city residents,” the public may address any item they wish to discuss with the mayor and council. They shall first obtain recognition by the chair, state their name, address and subject of their comments. The chair shall then allow the comments, subject to a three (3) minute limitation per speaker, or other limitations as the chair or council may deem necessary. Following such comments, if action is required or has been requested, the chair may place the matter on the current agenda or a future agenda or refer the matter to staff or a council committee for action or investigation and report at a future meeting.

7.3 Subjects on the current agenda: Any member of the public who wishes to address the council on an item on the current agenda shall make such request to the chair or presiding officer. The chair shall rule on the appropriateness of public comments as the agenda item is reached. The chair may change the order of speakers so that testimony is heard in the most logical grouping (i.e. proponents, opponents, adjacent owners, etc.). All comments shall be limited to three (3) minutes per speaker, or other limitations as the chair or council may deem necessary.

7.4 Manner of addressing the council – time limit: Each person addressing the council shall step up to the podium, give his/her name and address in an audible tone of voice for the record and, unless further time is granted by the council, shall limit his/her remarks to three (3) minutes. Agenda items “Comments from city residents” and “Continued comments from city residents” shall be limited to a total of 30 minutes each unless additional time or less time is agreed upon by the council (dependent upon the length of the council agenda). All remarks shall be addressed to the council as a body and not to any member thereof. No person, other than the chair, members of the council and the person having the floor, shall be permitted to enter into any discussion, either directly or through the members of the council. No questions shall be asked of the councilmembers, except through the chair. The council will then determine the disposition of the issue (information only, place on present agenda, workshop, a future agenda, assign to staff, assign to council Committee or do not consider).

7.5 Personal and slanderous remarks: Any person making personal, impertinent or slanderous remarks or who shall become boisterous while addressing the council may be requested to leave the meeting and may be barred from further audience before the council during that council meeting by the chair or presiding officer.

7.6 Written communications: Interested parties, or their authorized representatives, may address the council by written communication in regard to any matter concerning the city’s business or over which the council had control at any time. The written communication may be submitted by direct mail or by addressing the communication to the city clerk who will distribute copies to the councilmembers. The communication will be entered into the record without the necessity for reading as long as sufficient copies are distributed to members of the audience/public.

7.7 Comments in violation of the appearance of fairness doctrine: The chair may rule out of order any comment made with respect to a quasi-judicial matter pending before the council or its boards or commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can appear at the public hearing on the matter and present their comments.

7.8 “Out of Order” comments: Any person whose comments have been ruled out of order by the chair shall immediately cease and refrain from further improper comments. The refusal of an individual to desist from inappropriate, slanderous or otherwise disruptive remarks after being ruled out of order by the chair may subject the individual to removal from the council chambers.

These rules are intended to promote an orderly system of holding a public meeting and to give every person an opportunity to be heard.

8. Filling council vacancies and selecting mayor pro tem

8.1 Notice of vacancy: If a council vacancy occurs, the council will follow the procedures outlined in RCW 42.12.070. In order to fill the vacancy with the most qualified person available until an election is held, the council will widely distribute and publish a notice of the vacancy and the procedure and deadline for applying for the position.

8.2 Application procedure: The council will draw up an application form which contains relevant information that will answer set questions posed by council. The application form will be used in conjunction with an interview of each candidate to aid the council's selection of the new councilmember.

8.3 Interview process: All candidates who submit an application by the deadline will be interviewed by the council during a regular or special council meeting open to the public. The order of the interviews will be determined by drawing the names; in order to make the interviews fair, applicants will be asked to remain outside the council chambers while other applicants are being interviewed. Applicants will be asked to answer questions submitted to them in advance of the interview and questions posed by each councilmember during the interview process. The councilmembers will ask the same questions of each candidate. Each candidate will then be allowed two (2) minutes for closing comments. Since this is not a campaign, comments and responses about other applicants will not be allowed.

8.4 Selection of councilmember: The council may recess into executive session to discuss the qualifications of all candidates. Nominations, voting and selection of a person to fill the vacancy will be conducted during an open public meeting.

8.5 Selecting mayor pro tem and alternate mayor pro tem: The mayor pro tem and Alternate mayor pro tem will be selected by the councilmembers.

9. Creation of committees, boards and commissions

9.1 Community committees, boards and commissions:

The council may create committees, boards, and commissions to assist in the conduct of the operation of city government with such duties as the council may specify not inconsistent with the city code.

9.2 Membership and selection: Membership and selection of members shall be as provided by the council if not specified otherwise in the city code. Any committee, board, or commission so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the council. No committee so appointed shall have powers other than advisory to the council or to the mayor except as otherwise specified in the city code.

9.3 Removal of members of boards and commissions: The council may remove any member of any board or commission which it has created by a vote of at least a majority of the council (this rule does not apply to the civil service commission or any other such body which has statutory procedures concerning removal).

10. Suspension and amendment of these rules

10.1 Suspension of these rules: Any provision of these rules not governed by the city code may be temporarily suspended by a vote of a majority of the council.

10.2 Amendment of these rules: These rules may be amended or new rules adopted by a majority vote of all members of the council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior council meeting.

Sample procedures: Appearance of fairness and quasi-judicial hearing

For a complete explanation of the appearance of fairness doctrine and related hearing procedures, see the MRSC publication, *Appearance of Fairness Doctrine in Washington State*. The following sample procedures provide an example of a process for complying with the appearance of fairness doctrine in quasi-judicial hearings. They are provided as an example only – please do not copy without checking with your legal counsel. MRSC has samples of other council rules of procedure which include alternative wording.

Appearance of fairness doctrine defined

“When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must appear to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a board member’s personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided” (*Zehring v. Bellevue*, 99 Wn.2d 488, 1983).

Types of hearings to which doctrine applies

The Appearance of Fairness Doctrine applies to land use decisions of the Council which are quasi-judicial in nature. Quasi-judicial actions are proceedings of the city council which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance (RCW 42.36.010). Some examples of quasi-judicial actions which may come before the council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the hearing examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits.

General guidelines

a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the councilmember, or a councilmember’s business associate, or a member of the councilmember’s immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the councilmember’s employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the councilmember should disclose such facts to the mayor who will seek the opinion of the city attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The Mayor shall communicate such opinion to the councilmember.

Anyone seeking to disqualify a councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact.

Should such challenge be made prior to the hearing, the mayor shall direct the city attorney to interview the councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the presiding officer shall call a recess to permit the city attorney to make such interview and render such opinion.

The mayor shall have sole authority to request a councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the mayor or other councilmembers shall give due regard to the opinion of the city attorney.

Notwithstanding the request of the mayor or other councilmembers, the councilmember may participate in any such proceeding.

Hearing procedure

1. The mayor or other individual chairing the meeting will start by first describing the purpose of the meeting and will then read RCW 42.36.060:

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

 - (1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and
 - (2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a resident and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.
2. The chairperson will then ask each councilmember to state for the record what ex parte contacts they have had, whether written or oral, concerning the matter to be decided.

3. The chairperson will then ask the following questions:
 - (a) Does any member of this council have knowledge of having conducted business with either the proponents or opponents of this [name type of project or proceeding]?
 - (b) Does any member of this council have either a pecuniary or a nonpecuniary interest in the outcome of this proceeding?
 - (c) Does any member of this council know whether or not their employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?
 - (d) Does any member of this council live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?
 - (e) Does any member of this council have any special knowledge about the substance of the merits of this proceeding which would or could cause the councilmember to prejudge the outcome of this proceeding?
 - (f) Is there any member of this council who believes that he or she cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?
 - (g) Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the council from hearing this matter? If so, please state the name of the councilmember and the reason or reasons why you believe that councilmember should be disqualified.

After the above procedure has been followed and all requests for disqualification have been handled, the mayor or other person chairing the meeting will proceed with the hearing in accordance with the agenda.

Additional resources

Public Hearings – When and How to Hold Them, MRSC Focus

Knowing the Territory, MRSC

The Appearance of Fairness Doctrine in Washington State, MRSC

Public participation: Tips for talking with the council

The following is part of one city's guidance to the public on how they can provide input at council meetings. Similar language appears on several city web pages on the Internet.

- The city council welcomes participation in all public meetings. Arrangements for a sign language interpreter, hearing assistance and other assistance can be made by calling the council secretary at _____ or the deputy city clerk at _____.
- When you feel strongly about a public issue or a local concern, the council encourages you to share your information and thoughts with them. If you are unable to attend a meeting or would rather not give testimony at the meeting, you are encouraged to send/fax a letter which would be made a part of the official record.
- To speak during the public comment period, you do not have to sign up in advance, and you may talk on any item and/or concern not scheduled for a public hearing.
- If you want to speak on the topic at a public hearing scheduled for that evening, you must comment during the public hearing portion of the meeting, however, you need not sign up in advance.
- When you talk with the council, step up to one of the microphones and identify yourself by stating your name and address so they will know who you are. Be sure your microphone is on and speak into it clearly (it is not necessary to try to adjust the microphone to your height).
- During the public comment period, your comments are limited to three minutes. These are guidelines to help councilmembers hear as many different viewpoints as possible in the limited time available. If you are speaking for a group, you must tell the council how the group developed the position that you are presenting.
- If previous speakers have already made the comments you wish to make, feel free simply to identify yourself and indicate your agreement with what has already been said.
- During the public comment periods, residents have called the council's attention to a wide variety of issues concerning the city. Residents' views have ranged from concerns about parking in front of their homes to improving wheelchair accessibility throughout the city.

Suggested presentation model for precise, well organized proposals

- **Point.** What is the idea you wish to present? Begin with an "I statement" outlining your idea, such as, "I am here to (support/oppose)..."
- **Reason.** Why you are making this point. This is an important step so the listener does not make assumptions about your motives.
- **Example.** Brief and relevant example to clarify and make your point concrete.
- **Summary.** What condition will be changed or improved if your point is adopted?
- **Action.** (If appropriate, depending on the situation) What needs to be done and who will do it.

Public hearings

A public hearing offers you a formal opportunity to give your views to the Council on the subject of the hearing.

- To give testimony, step up to one of the microphones and identify yourself by stating your name and address for the record. When you talk to the council during a public hearing, councilmembers, staff and the audience will remain silent. After the last person has spoken, the hearing will be closed. The city council will then discuss and will often decide on the issue.
- The audience may not comment during council's deliberations unless a councilmember requests more information from a speaker.
- Again, you are also encouraged to submit your written comments on the subject to the council secretary or city clerk before the meeting so they can be included in the record and distributed to the council.

Meeting tips

Meeting savvy

Consider these pieces of advice when preparing for a meeting:

- **Give colleagues time to assimilate things.** You'll notice that an idea rejected one day may be presented by the one who opposed it earlier.
- **Don't try to please everyone.** This simply does not work and makes you look weak and indecisive.
- **Confront meeting disrupters immediately.** Don't let them take control of the meeting or set its tone.
- **"We've always done it this way."** Don't become so enamored with precedent that it keeps the group from moving forward.
- **Don't waste quality meeting time dealing with routine complaints that can be resolved by staff outside the meeting.**
- **Apply rules equally with all participants.** Don't strictly enforce a time limit for one person and be lax with another.
- **Be careful about using first names of audience members you know and last names of those you don't.** It may be interpreted as bias.
- **Alert staff before the meeting if you intend to bring up an important issue.** This simple courtesy will help staff prepare background information and avoid embarrassment.
- **Be sensitive to audience perceptions regarding your neutrality during a recess, especially during hot meetings.** If you meet with one group and not with another, you may be perceived as favoring that group.
- **If you disagree with a significant statement or proposal made by a colleague or staff member at a meeting, express that disagreement.** Silence may be interpreted by staff as agreement and they may take action based upon that assumption.

Chairperson faux pas

Acting as the chair for a group is a demanding task. Here are some common mistakes:

- Failing to remain impartial during a heated discussion.
- Forgetting to relinquish the gavel when the chair becomes emotionally involved in an issue.
- Treating members unevenly.
- Cutting off discussion before members are ready.
- Failing to close discussion in a timely manner.
- Failing to establish or follow the agenda.
- Allowing the meeting to become too informal; letting the meeting drift.
- Neglecting to explain the process being followed.
- Failing to restate audience questions so all in the audience can hear.
- Failing to recognize and deal with councilmember objections to procedure or process.
- Failing to protect members and staff from verbal attack.
- Losing track of amendments to motions.
- Failing to restate motions before they are voted upon.
- Forgetting to call recesses during long meetings.
- Neglecting to reconvene the meeting at the specified time after a recess.

Resist the temptation to be a dictator at council meetings. Remember: it's the council's meeting, not the mayor's meeting.

The art of asking questions: How to aid discussion by asking the right questions

Questions are one of the most important tools you can use to obtain information, focus the group and facilitate decision-making. Here are some samples:

Asking of colleagues

- How do you feel about this item?
- What do you think the proposed action will accomplish?
- Would you please elaborate on your position?
- What results are we looking for?

Asking of staff

- What other alternatives did you consider?
- Why has this item come to be on our agenda?
- What are we trying to accomplish with this law/policy?
- What are the benefits and drawbacks?
- Will you please explain the process?
- Have we ever made an exception to this policy?
- What would it take for you to support this?
- What type of feedback have you received from the residents?

Asking of the public

- How will this proposal affect you?
- What do you think about the proposed action?
- What are your concerns?
- What other ways can you suggest for solving the problem?

To broaden participation

- We've heard from some of you. Would others who have not yet spoken like to add their ideas?
- How do the ideas presented thus far sound to those of you who have been thinking about them?
- What other issues related to this problem should we discuss?

To limit participation

- We appreciate your contributions. However, it might be well to hear from some of the others.
- You have made several good statements, and I am wondering if someone else might like to ask a question or make a statement.
- Since all of the group have not yet had an opportunity to speak, I wonder if you could hold your comments until a little later?

To focus discussion

- Where are we now in relation to the decision we need to make?
- Would you like to have me review my understanding of what's been said and where we are?
- Your comment is interesting. However, I wonder if it relates to the problem before us?
- As I understand it, this is the problem...Are there additional comments before we come to a decision?

To help the group move along

- I wonder if we've spent enough time on this and are ready to move along to...?
- Have we gone into this part of the problem far enough so that we can shift our attention to...?
- In view of the remaining agenda items, would it be well to go to the next question before us?

To help the group reach a decision

- Do I sense an agreement on these points...?
- What have we accomplished up to this point?
- Should we look at our original objective and see how we close we are to it?
- Would someone care to sum up our discussion on this issue?

To lend continuity

- At our last meeting we discussed this issue. Anyone care to review what we covered then?
- Since we cannot reach a decision at this meeting, what issues should we take up at the next one?
- Are there points that need further study before we convene again?

Source:
Elected Official's Little Handbook, Len Wood
If You Only Had More Time – But You Don't, International City Management Association

Parliamentary procedure

Parliamentary procedure provides the process for proposing, amending, approving and defeating legislative motions. Although following parliamentary procedure is not required, it can make council meetings more efficient and reduces the chances of council actions being declared illegal or challenged for procedural deficiencies.

A city may adopt, by ordinance or resolution, its own set of rules governing the conduct of council meetings, or it may adopt by reference formalized rules such as Robert's Rules of Order. Many Washington cities have adopted Robert's Rules, supplementing those rules with additional rules on issues such as voting abstentions and motions for reconsideration. (See Appendix 5, Sample Council Rules of Procedure.)

Motions

Business is brought before the council by motions, a formal procedure for taking actions. To make a motion, a councilmember must first be recognized by the mayor. After the councilmember has made a motion (and after the motion is seconded if required), the chair must then restate it or rule it out of order, then call for discussion. Most motions require a second, although there are a few exceptions.

Exact wording of motions and amendments is important for clarity and recording in the minutes. If it's a complex motion, the motion should be written down for the chair to read.

Use parliamentary procedure as

a tool, not a bludgeon. It is bad

practice to use the power of the

chair to thwart the will of the

majority.

Robert's Rules

The following summarizes important points from Robert's Rules of Order. Other parliamentary rules or your own council rules of procedure may contain different provisions.

- Only one subject may be before a group at one time. Each item to be considered is proposed as a motion which usually requires a "second" before being put to a vote. Once a motion is made and seconded, the chair places the question before the council by restating the motion.
- "Negative" motions are generally not permitted. To dispose of a business item, the motion should be phrased as a positive action to take, and then, if the group desires not to take this action, the motion should be voted down. The exception to this rule is when a governing body is asked to take action on a request and wishes to create a record as to why the denial is justified.
- Only one person may speak at any given time. When a motion is on the floor, an order of speaking is prescribed by Robert's Rules, allowing the mover of a motion to speak first, so that the group understands the basic premise of the motion. The mover is also the last to speak, so that the group has an opportunity to consider rebuttals to any arguments opposing the motion.
- All members have equal rights. Each speaker must be recognized by the moderator prior to speaking. Each speaker should make clear his or her intent by stating, "I wish to speak for/against the motion" prior to stating arguments.
- Each item presented for consideration is entitled to a full and free debate. Each person speaks once, until everyone else has had an opportunity to speak.
- The rights of the minority must be protected, but the will of the majority must prevail. Persons who don't share the point of view of the majority have a right to have their ideas presented for consideration, but ultimately the majority will determine what the council will or will not do.

Types of motions

Robert's Rules of Order provides for four general types of motions.

Main motions

The most important are main motions, which bring before the board, for its action, any particular subject. Main motions cannot be made when any other motions are before the group.

Subsidiary motions

Subsidiary motions are motions which direct or change how a main motion is handled. These motions include:

Tabling. Used to postpone discussion until the group decides by majority vote to resume discussion. By adopting the motion to "lay on the table", a majority has the power to halt consideration of the question immediately without debate. Requires a second, nondebatable, not amendable.

Previous question or close debate. Used to bring the body to an immediate vote. It closes debate and stops further amendment. Contrary to some misconceptions, the majority decides when enough discussion has occurred, not the moderator. The formal motion is to "call for the question" or "call for the previous question," or simply, "I move to close debate." The motion requires a second, is not debatable and requires a two-thirds majority.

Limit/extend debate. May be desired if the group has adopted a rule limiting the amount of time that will be spent on a topic, or if the group desires to impose a time limitation.

Postpone to a definite time. Similar to tabling, except that the motion directs that the matter will be taken up again at some specific date and time.

Refer to committee. Directs that some other body will study the matter and report back.

Amendment. Used to "fine tune" a motion to make it more acceptable to the group. The amendment must be related to the main motion's intent and cannot be phrased in a way that would defeat the main motion. Two amendments may be on the floor at one time: the first amendment modifies the main motion, and the second amendment must relate to the first amendment. When an amendment is on the floor, only the amendment may be debated. The amendments are voted on in the reverse order in which they were made, as each amendment changes to some degree the intent of the main motion. As each amendment is voted on, an additional primary or secondary amendment may be introduced. Requires a second, debatable, majority vote.

Postpone indefinitely. This motion effectively kills a motion, because, if adopted, a two-thirds vote is subsequently required to take the matter up again.

Incidental motions

Incidental motions are housekeeping motions which are in order at any time, taking precedence over main motions and subsidiary motions. These motions include:

Point of order. To bring to the group's attention that the rules are being violated. You don't need not to be recognized prior to making a point of order. This is not really a motion, but requires the moderator to make a ruling as to whether or not immediate consideration is proper.

Appeal from the decision of the chair. The group can overrule the chair on any decision. While the motion must be seconded, it cannot be amended. When this motion is moved and seconded, the moderator immediately states the question, "Shall the decision of the chair stand as the judgment of the council?" If there is a tie vote, the chair's decision is upheld. The motion is not debatable when it applies to a matter of improper use of authority or when it is made while there is a pending motion to close debate. However, the motion can be debated at other times. Each person may speak once, and the moderator may also state the basis for the decision.

Parliamentary inquiry. Not a motion, but a question as to whether an action would be in order.

Point of information. A person may rise to offer information that is considered necessary for the group. This provision is not used to offer debate.

Division of assembly. To require a more precise method of counting votes than by a voice vote, such as having persons raise hands, or stand. No second, not debatable, no vote required.

Request to withdraw a motion. Contrary to popular misconception, a motion cannot be withdrawn by its mover. This request requires majority approval.

Suspension of the rules. When matters are to be taken out of order, or a particular task can be better handled without formal rules in place, this motion can be approved by a two-thirds vote of the group. However, until the rules are restored, only discussion can occur; no decisions can be made. Second required, not debatable, not amendable.

Object to consideration of a question. When a motion is so outrageous, intended to distract the group from resolving legitimate business. The motion can be objected to and ruled out of order without debate. However, if the chair does not rule the motion out of order, a two-thirds vote of the group can block further consideration

Renewal motions

Once the group has taken action, renewal motions require the group to further discuss or dispose of a motion. The motions include:

Reconsider. When the group needs to discuss further a motion that has already been defeated at the same meeting. A majority of the council must approve taking additional time to debate the motion again. The motion can be made only by a person who voted on the prevailing side earlier on the question. Contrary to another popular misconception, the motion may be brought up again at a subsequent meeting. If the moderator believes that there is no indication that the group's wishes have changed, however, the motion can be ruled out of order, subject to an appeal from the decision of the chair.

Take from the table. Unless the original motion to table directed that the motion be brought back at a specific date and time, a majority of the group must pass a motion to take from the table. Such a motion is nondebatable.

Rescind. When the group wishes to annul some action, a motion to rescind is in order at any time. If prior notice has been given to the group that this action will be considered, the motion to rescind can pass with a simple majority vote; however, if no prior notice has been given, the vote requires a two-thirds majority.

Questions of privilege

Finally, there are a few questions of privilege that are in order at any time and must be disposed of prior to resuming discussion on the matter at hand:

Fix the time for next meeting. This is in order at any time, including when a motion to adjourn is pending. Second required, not debatable, amendable.

Adjourn. To bring the meeting to a halt. Second required, not debatable, not amendable. Alternatively, instead of a motion, the chair can ask if there is any further business. If no response, the chair can say, "since there is no further business, the meeting is adjourned."

Recess. A temporary break in the meeting; should state a time at which the meeting will resume. Second required, not debatable, not amendable.

Point of privilege. A matter that concerns the welfare of the group. Can be raised even when another person is speaking. No second, not debatable, no vote required.

Call for the orders of the day. A demand that the group return to the agenda. Can be taken when another person is speaking, no second required, not debatable, no vote required.

Keeping out of trouble

Public officers have the duty of serving the public with undivided loyalty, uninfluenced by any private interest or motive. Care must be taken not to violate this duty of trust, either in appearance or in fact. The behavior of public officers is often scrutinized by the public and is the subject of a profusion of laws. The statutory provisions and common law doctrines that public officials should be familiar with include:

- Conflict of interest
- Incompatible offices
- Appearance of fairness
- Public records disclosure
- Financial disclosure
- Salary increase prohibitions

Keep in mind that there may be overlap between these topics. For example, an activity that passes the conflict of interest test may violate appearance of fairness. It is beyond the scope of this publication to discuss most of these doctrines in any detail. However, be aware that more detailed information is available on these doctrines in the MRSC publication *Knowing the Territory*.

A brief discussion of financial disclosure requirements and the salary increase prohibitions will be provided here because these doctrines are not discussed in *Knowing the Territory*.

Financial disclosure by public officials

Another component of “open government” is personal disclosure of the financial affairs of elected officials. The disclosures of political campaign financing and legislative lobbying are other important areas, but they will not be discussed here. Presumably, councilmembers have been exposed to those requirements as part of their campaign process.

Financial disclosure is required of all elected officials and members of their immediate families, except in small cities and towns. (RCW 42.17A.710). A statement of financial affairs for the preceding calendar year must be filed between January 1 and April 15. Financial disclosure is also required of an appointee in an elective office vacancy.

Q. Is any financial disclosure required of nonelected officials?

A. The only appointed city official who is required to make personal financial disclosures is the treasurer. (RCW 42.17A.570). Cities and towns with populations of 1,000 or fewer are exempt. The scope of the financial disclosure required of treasurers is more limited than for elected officials, consisting of information about financial institutions where the treasurer holds an office, directorship, or ownership interest and where public funds are held.

Q. What small cities and towns are exempt from disclosure requirements?

A. Officials in cities and towns with fewer than 1,000 registered voters as of the date of the most recent general election are exempt from the financial reporting requirements. (RCW 42.17A.135). However, officials in these municipalities can be required to file financial disclosures upon petition of 15 percent of the registered voters or upon adoption of an ordinance or resolution to that effect.

Salary increases for elected officials

Q. May a councilmember receive a salary increase immediately?

A. The general rule is that salary increases, adopted by ordinance, may not raise the salaries of current councilmembers. The state constitution prohibits an increase (or decrease) in the salary of city or town councilmembers after election or during their term of office. This means that the city or town council can vote to increase salaries, but the new salaries may not take effect until after the next election, and even then would be effective only for those councilmembers who are up for re-election. As long as the salary increase ordinance was passed prior to the election, councilmembers are eligible to receive the pay increase as soon as they begin a new term of office. There is one exception. If salaries are set by a salary commission, an increase can go into effect immediately.

Q. May a mayor in a mayor-council city receive a salary increase immediately?

A. The salary of mayors may be raised during their term of office, as long as their vote was not required to pass the applicable ordinance. The state constitution contains an exception allowing salary increases during an official's term in office if that official does not fix his or her own compensation. The exception cannot be triggered by an official abstaining from the vote for a salary increase because it is a councilmember's authority to fix compensation that is determinative. This exception would allow the salary of a mayor in a mayor-council city to be increased during his or her term of office, provided that the vote of the mayor is not necessary for the passage of the applicable ordinance. (Attorney General's Opinion, AGO 1968 No. 36).

Q. May a person appointed to fill a council vacancy receive a salary increase immediately, if the increase was enacted prior to the appointment?

A. No, because the Washington Supreme Court has held that the constitutional provision forbidding change in the compensation of a public officer during a term of office refers to the term itself, not to the individual. Therefore, the salary increase is not effective as to an officer appointed or elected to fill out the unexpired term of their predecessor, in situations where the predecessor had been elected prior to the time the salary increase was adopted. (State ex rel. Wyrick v. Ritzville, 16 Wn.2d 36, (1942)).

Are mayor and councilmember emails, texts, and social media subject to public disclosure?

It is important for councilmembers to understand that emails they send, which qualify as public records, are subject to public disclosure under the state Public Records Act (RCW 42.56). Under the Act, a "public record" is broadly defined to include electronic records "containing information relating to the conduct of government or the performance of any proprietary function . . ." Email, text messages, social media, like any other written correspondence and memoranda, which falls within this definition, with few exceptions stated by the Public Records Act, are public records.

This means that email communications between councilmembers, councilmembers and community members, councilmembers and other officials, councilmembers and members of boards and commissions, and councilmembers and city staff may be subject to disclosure. Caution: Keep this in mind as you compose emails, recognizing that your audience may ultimately be broader than the direct recipients of your communication.

Initiative, referendum, and recall

Initiative and referendum

The powers of initiative and referendum are means by which residents can impact legislation directly. Initiative is the power of the public to initiate ordinances by petition. Referendum is the means by which the public can have enacted ordinances referred to them for review. These powers of the public are not universally available. In fact, the powers of initiative and referendum are only available in first class cities, code cities, and cities organized under the commission form of government. Code cities do not automatically have the powers of initiative and referendum, but may adopt them, either by voter resolution or by resolution of a majority of the city council.

(First class cities - RCW 35.22.200 (and the charters); code cities - RCW 35A.11.080 - .100; commission cities - RCW 35.17.240 - .360).

How are the powers of initiative and referendum exercised?

Initiative and referendum procedures in first class cities are controlled by each city's charter. Voters of a commission city or a code city which has acquired the powers of initiative and referendum may initiate ordinances or have certain ordinances which have been passed by the legislative body referred to them for affirmation or rejection at an election. In either instance, the process is begun by petition. In a commission city, a petition is filed, signed by registered voters equal in number to 25 percent of the votes cast for mayoral candidates at the last preceding city election. In a code city, the petition requires signatures of registered voters equal to 15 percent of the number of registered voters in the city as of the date of the last preceding city general election.

Certain ordinances are not subject to referendum. The following ordinances are excepted from the process in both commission and code cities:

- Ordinances initiated by petition
- Ordinances necessary for the immediate preservation of public peace, health, and safety, or for the support of city government and its existing public institutions, which contain a statement of urgency and are passed by a unanimous vote of the commission or council
- Ordinances providing for local improvement districts

In addition, the following types of ordinances are exempt from referendum in a code city:

- Ordinances appropriating money
- Ordinances providing for or approving collective bargaining
- Ordinances providing for the compensation of or working conditions of city employees
- Ordinances authorizing or repealing the levy of taxes

If a valid petition is filed seeking a referendum, the ordinance does not go into effect until it has received a majority of the votes cast at the election.

If a valid initiative petition is filed (accompanied by a proposed ordinance), the commission or council shall either pass the ordinance within 20 days of the clerk's certification of the petition, or else submit the ordinance to the voters at a general or special election called for that purpose. (RCW 35.17.260).

Recall

Elected officials are subject to voter petition for recall under state law (RCW 29A.56.110-29A.56.270). The procedures require that a petition be filed setting forth charges that an elected public official has committed an act, or acts, of malfeasance, or has violated his or her oath of office. "Misfeasance" or "malfeasance" means performance of a duty in an improper manner or wrongful conduct that interferes with performance of official duty. "Violation of the oath of office" means the willful neglect or failure by an elective public officer to faithfully perform a duty imposed by law. The petition for recall must state specific conduct that clearly amounts to misfeasance, malfeasance, or violation of the oath of office. In addition, the person making the charge must have knowledge of the underlying facts. If the court finds the petition sufficient, then the sponsors of the recall must obtain a set number of supporting signatures before the recall election is conducted. A majority vote in favor of recall results in the official's discharge from office.

Voter actions such as recall are rarely initiated. The availability of such extreme remedies, however, serves to emphasize the accountability of elected officials to the public. This accountability, which is at the core of our political system, places certain expectations on the behavior of elected officials. Some of these expectations are explicitly formulated into rules, an understanding of which is necessary to keep elected officials out of trouble.

The mayor pro tempore

On occasion, a councilmember may find him or herself in the role of mayor. The mayor pro tempore (also called the mayor pro tem or the deputy mayor) is appointed by the council to serve in the absence of the mayor. The mayor pro tempore presides at meetings of the council, administers oaths, and signs instruments in the absence of the mayor. A councilmember acting as mayor pro tempore generally retains his or her councilmanic vote. The mayor pro tempore generally serves only when the mayor's absence is temporary. When a vacancy occurs in the office of mayor, a new mayor is appointed by the council. The authority of a mayor pro tempore varies somewhat according to the city classification.

- **First class cities:** The powers of the mayor pro tempore are controlled by the city charter.
- **Second class cities:** The mayor pro tempore is a councilmember elected by the members of the council. The mayor pro tempore may not appoint any officer or veto any ordinance. (RCW 35.23.191).
- **Towns:** The mayor pro tempore is chosen by the council for a specified period of time, not to exceed six months. (RCW 35.27.160).
- **Code cities:** The Optional Municipal Code calls for the designation by the city council of a councilmember or "any qualified person" to serve as mayor pro tempore. (RCW 35A.12.065).

Definitions

Administrative. Pertaining to management and carrying out of laws and functions, as opposed to legislative and judicial.

Agency and trust funds. Funds established to account for cash and other assets held by a municipality as agent or trustee. Such funds are not assets of the municipality but, through the operation of law or by agreement, the municipality is responsible for their accountability. Examples are the Fireman's Relief Fund and the Police Pension Fund.

Allocation of funds. To set aside funds for a specific purpose or program.

Amendment. A change or addition which changes the meaning or scope of an original formal document. Often these are laws or regulations. However, plans or specifications can also be amended.

Appropriation. A sum of money authorized by a legislative body to be spent for a certain purpose.

Assessment. The value placed on an item of real or personal property for property tax purposes. The rate of tax times the value equals the amount of tax levied on the property. Also a special tax levied on the property within a special assessment district.

Audit. An examination of the financial activities of an agency and the report based on such examination.

Bond. A debt instrument issued by a municipality. Bonds normally bear interest. They are a common way of raising money for capital improvements.

Budget. A plan for spending and receiving money to sustain municipal operations during a fiscal year or years. A capital budget is a plan for financing purchases or construction of items of high cost and long life, such as fire engines, streets, and buildings.

Capital outlay. Expenditures made to acquire fixed assets or additions to them. They are recorded in the general fund or utility fund where the assets are to be used. Ultimately, under good property accounting, such assets acquired through the general fund should be reflected in the general fixed assets group of accounts.

Capital program or capital budget. A schedule of purchase or construction of items of high cost, such as fire engines, streets, and buildings, over a period of years (normally five) together with a plan for spending and receiving the money to pay for the items.

Capital reserve fund. Established to account for resources legally set aside for anticipated capital expenditures, including construction, purchase or replacement of, or additions to, municipal building, equipment, machinery, motor vehicles or other capital assets.

Certification. A formal, written declaration that certain facts are true or valid.

City manager. The chief administrator of a municipality in the council-manager form of government, appointed by the council as the city's chief executive.

Civil service system. A means of hiring & disciplining employees, usually pertaining to police and fire, whereby a civil service commission hears appeals on complaints brought by employees and applicants.

Cluster development. A type of residential development where the overall density conforms to typical standards but allows for the concentration of structures on a portion of the tract while leaving the remaining open space for common resident usage. This type of development should be sympathetic to environmental conservation and protection.

Collective bargaining. A process by which an employee organization/union negotiates with an employer to reach agreement on wages, hours, and terms and conditions of employment.

Comprehensive plan. A generalized, coordinated land use policy statement of the governing body of a city, town, or county, consisting of a map or maps and descriptive text covering objectives, principles and standards used to develop the plan. A GMA comprehensive plan must include a plan, scheme, or design for (at least) the following elements: land use; housing; capital facilities; utilities; natural resource lands and critical areas; and rural areas (counties only).

Conditional use. A use which is not appropriate to a particular zone district as a whole, but may be suitable in certain localities within the district only when specific conditions and factors prescribed for such cases within the zoning ordinance are present. Conditional uses are allowed or denied by a board of adjustment, planning commission, city council or hearings examiner.

Council. The governing body of a city which sets legislative policy for the city.

Debt service. Payments to creditors, primarily the holders of municipal bonds. Debt service includes principal, interest and minor incidentals such as agents' fees.

Developer. Any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

Development plan. The provisions for the development of a tract of land, including a subdivision plat, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities.

Easement. A right-of-way for public or quasi-public use. Normally, they are used for utilities, bridle paths, parkways, floodways, scenic uses, and other purposes. The fee title to land in the easement areas remains tied to the adjacent land, and the easement rights are relinquished when the public or quasi-public use ceases.

Effluent. A term applied to the water discharged from a sewage treatment device.

Eminent domain. The concept of the power of certain governmental entities to acquire, for public use, privately owned real estate, by means of legal processes and adjudicated compensation to the private owner.

Executive. The power to carry out laws and functions, veto legislation, appoint planning commissioners and perform other duties as prescribed by law. If a municipality has a city manager, the administrative portion of the executive function is the responsibility of the manager.

Executive session. A meeting closed to the public; they can legally be held only for certain purposes.

Feasibility study. A preliminary survey to determine the design, aesthetics, construction and economic aspects of a proposed project.

Flood plain. The area along a natural watercourse subject to periodic overflow by water.

General fund. Used to account for all revenues and the activities financed by them, which are not accounted for in some special fund.

General obligation bond. A financial instrument giving borrowing power to a municipality, based upon pledging of taxing power to retire the debt and pay interest.

General obligation bond funds. Established to account for the proceeds from bond sales and other revenues properly allocated to these funds and the costs of projects financed by them.

Impact fees. Fees imposed on new development activities as partial financing for public improvements (public streets and roads, publicly owned parks, school facilities, etc.).

Improvements. Those physical changes to the land necessary to produce usable and desirable lots from raw acreage including but not limited to; grading, paving, curb, gutter, storm sewers and drains, improvements to existing watercourses, sidewalks, crosswalks, street signs, monuments, water supply facilities and sewage disposal facilities.

Industrial park. A planned industrial area where consideration has been given to human and aesthetic values, such as vegetation, open space and buffer zones.

Interest arbitration. A process by which an impartial third party decides the content of a collective bargaining agreement when the employer and the employee group reach impasse in negotiations. Pertains only to full-time fire departments and police departments in cities with greater than 2,500 population.

Job description. An outline of the duties assigned a class of personnel positions together with the training and experience normally required to qualify for the class.

Judicial. The power to judge, to administer justice and interpret laws and ordinances.

Land development. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving (a) group of two or more buildings or (b) the division or allocation of land or space between or among two or more existing or prospective occupants to include streets, common areas, leaseholds, condominiums, building groups or other features; a subdivision of land.

Legislative. Pertaining to the power to make laws as opposed to administrative, executive and judicial.

Mayor. The chief executive of the city in the strong-mayor form, the ceremonial head in a council-manager form.

Meeting. A gathering of elected officials set or called in accordance with prescribed laws or charter provisions and where business may be transacted.

Mill. A property tax equal to one dollar of tax per one thousand dollars of assessment.

Nonconforming use. A use, whether of land or of structure, not complying with the applicable use provisions in a zoning ordinance or amendment.

Nonconforming structure. A structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment as enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment to its location. Such nonconforming structures include, but are not limited to, nonconforming signs.

Official. A person who occupies a municipal legislative, judicial, administrative, executive or enforcement position.

Ordinance. A law or statute enacted by a city, town or county. See Resolution.

Personnel system. A method of recruiting, selecting and promoting people to perform the work of a municipal organization and the method of classifying and assigning pay scale to their jobs together with related personnel activities concerning hours of work, training, grievance procedures, and union relationships.

Planned residential development (Planned unit development). An extension of cluster development including detached, semi-detached, attached and multi-storied structures, and may include land uses other than residential to the extent they are designed to serve the residents.

Planning. A process of deciding what is to be done and how it is to be accomplished; the process of deciding how land should be used and where public facilities should be located.

Planning commission. A planning agency, authorized by law to prepare and recommend plans for the development of physical, social, economic and cultural resources/facilities within a city.

Plat. The official map of a subdivision of land.

Public hearing. A meeting or portion of a meeting set up to give members of the public a chance to speak on a particular subject such as a proposed ordinance.

Regulation. A rule, procedure or other formal requirement passed to carry out the purpose of the law. It carries the same legal power as the law. However, the rule or formal requirement may only be used to carry out the purpose of the law under which it is passed.

Revenue bonds. A borrowing tool with higher interest rates than general obligation bonds, but does not need voter approval. Based on a revenue-producing project and not municipal taxing power.

Resolution. An act that is typically less formal than an ordinance, expressing the opinion or mind of the legislative body, and generally dealing with matters of a special or temporary character.

Revisions. Written or added changes, corrections or improvements to a plan, specification or drawing.

Revolving funds. Special purpose funds providing a constant source of funds for assessable public improvements. General obligation bonds, repayable from general revenues, as well as assessed taxes, may be used as sources for establishing such a fund.

Right-of-way. The right of passage over the property of another. The public may acquire it through direct dedication from land subdivision or through implied dedication – accepted access over a period of time to a beach or shoreline. The pathways over which utilities and drainage ways run are often referred to as easements.

Sinking fund. Established to account for the accumulation of money providing for the retirement of bonds and the payment of interest.

Soil percolation test. A field test conducted to determine the absorption capacity of soil to a specific depth in a given location for the purpose of determining suitability of soil for on-site sewage disposal.

Special assessment bond funds. Similar to general obligation bond funds, however, the cost of public improvements provided by the bond proceeds are assessed against owners of properties benefited by the improvements.

Special revenue funds. These funds are established to account for revenues specifically raised for a particular purpose. A special fund is usually created for each purpose (light tax fund, water tax fund).

Specifications. The written instructions which accompany and supplement the drawings in a contract.

Subdivision. The division of a single tract or other parcel of land into two or more lots. (Specific definitions will vary in specific ordinances or regulations.)

Subdivision and land development regulations.

Procedures and requirements which must be met before the subdivision or development of land is permitted.

Taking. Subject to much litigation and court interpretation, this term refers to the taking and appropriation of private property for public use, with "just" compensation paid to the property owner.

Temporary funds. Created to accommodate a specific need that may arise. Must include a system of complete accountability and be closed promptly upon completion of its purpose. Remaining assets should be distributed in accordance with the intentions of the elected officials as set forth at the time the fund was created.

Urban growth area. Areas defined, under the Growth Management Act, by cities and counties for projected growth and provision of urban services.

Utility funds. These funds account for the financial transactions of utility services rendered to the general public financed by specific user charges (water fund, electric fund, sewer fund).

Variance. The permission granted by a city council, board of adjustment or hearing examiner, following a public hearing, for an adjustment to some regulation in a zoning ordinance to alleviate an unnecessary hardship. The permission granted must not be contrary to the public interest and maintain the spirit and original intent of the ordinance.

Zoning. The regulation by a municipality (city, town, or county) of the use of land within its jurisdiction, and of the buildings and structures located thereon, in accordance with a general plan and for the purposes set out in the enabling statute.

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Revenue Guide



for Washington Cities and Towns



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REVENUE GUIDE FOR WASHINGTON CITIES AND TOWNS

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DISCLAIMER

The content of this publication is for informational purposes only and does not represent criteria for legal or audit purposes. It is intended to provide city staff and officials with an overview of their available revenue options, restrictions on the use of such revenues, and key questions to consider. It is not intended to replace existing prescriptive guidance in the BARS Manual, issued by the State Auditor's Office. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.

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Revision History

MRSC does our best to update this publication every year to reflect any new legislation or other relevant information impacting city and town revenues. Below is a summary of significant recent changes. If you are aware of any other sections that you think need to be updated or clarified, please contact mrsc@mrsc.org. To make sure you have the most recent version, please go to mrsc.org/publications.

DATE	SUMMARY
June 2020	<p>Property Taxes:</p> <ul style="list-style-type: none">• <i>Affordable Housing Levy</i>. New legislation expands use of revenues to include affordable homeownership programs for “low-income” households up to 80% of county median income (SB 6212).• <i>Cultural Access Program Levy</i>. New legislation providing county uniformity regarding use of revenues (SB 5792). <p>Retail Sales and Use Taxes:</p> <ul style="list-style-type: none">• <i>Affordable Housing & Related Services Sales Tax</i>. New legislation allows city council to optionally impose this sales tax without voter approval (HB 1590). Bill also re-imposes county “right of first refusal” deadline of September 30, 2020; cities may not impose this sales tax before that deadline.• <i>Affordable Housing Sales Tax Credit (HB 1406)</i>. Anticipated legislation to fix drafting error and extend deadline to adopt qualifying local tax (HB 2797) was vetoed.• <i>Cultural Access Program Sales Tax</i>. New legislation providing county uniformity regarding use of revenues (SB 5792). <p>Other Revenue Sources:</p> <ul style="list-style-type: none">• <i>Tourism Promotion Area Fees</i>. New legislation removed 40,000 county population requirement; any city/county may now impose these fees (ESSB 6592). Bill also provided additional definitions and authorizes additional fee up to \$3 per room per night through 2027, but fees must be repealed if enough lodging businesses petition the legislative body.• <i>Transportation Benefit District (TBD) Vehicle License Fees</i>. Lower courts have largely upheld Initiative 976, which has now been appealed to the state Supreme Court.

DATE	SUMMARY
<p>November 2019</p>	<p>Property Taxes:</p> <ul style="list-style-type: none"> • <i>Regular Levy (General Fund)</i>. New legislation clarifying expiration and use of revenues for fire pension levy (SSB 5894). <p>Retail Sales and Use Taxes:</p> <ul style="list-style-type: none"> • <i>Sales Tax Exemptions</i>. Updated exemptions for sales to nonresidents (ESSB 5997) and mergers, annexations, and consolidations (SB 5337). • <i>Affordable Housing Sales Tax Credit (HB 1406)</i>. New legislation establishing affordable housing sales tax credit (SHB 1406). <p>Business and Utility Taxes & Fees:</p> <ul style="list-style-type: none"> • <i>Business and Occupation (B&O) Taxes</i>. Added reference to 2019 model ordinance updates regarding allocation and apportionment (SHB 1403). <p>Real Estate Excise Taxes:</p> <ul style="list-style-type: none"> • <i>Real Estate Excise Taxes (REET)</i>. New legislation adopting graduated state real estate excise tax (ESSB 5998). • <i>REET 2 – the "Second Quarter Percent."</i> New legislation expanding REET 2 revenues for affordable housing and homelessness (EHB 1219). <p>“State Shared” Revenues:</p> <ul style="list-style-type: none"> • <i>City-County Assistance (ESSB 6050) Distributions</i>. Changing distribution formula due to new graduated state REET scale (ESSB 5998). • <i>Streamlined Sales Tax (SST) Mitigation Payments</i>. Extending SST mitigation payments to June 30, 2021 for certain cities (ESHB 1109, Section 722). <p>Other Revenue Sources:</p> <ul style="list-style-type: none"> • <i>Franchise Fees</i>. New FCC order requiring cities to count most non-monetary in-kind contributions toward the 5% cable franchise fee. • <i>Transportation Benefit District (TBD) Vehicle License Fees</i>. Citizen initiative repealing TBD license fee authority, pending legal challenges (I-976).
<p>February 2019</p>	<p>Entire document reviewed, re-written, and re-published in its entirety.</p>

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Introduction

The foundation of any city government is its fiscal health. The revenues it receives, both present and projected for the future, set the stage for discussing what services to provide as well as the level of those services – including the facilities, equipment, and infrastructure that will be needed.

MRSC's *Revenue Guide for Washington Cities and Towns* provides information on all the major revenue sources and most of the minor ones that are available to cities and towns in Washington State. This guide is intended to help city elected officials and staff members by providing a comprehensive explanation of the city's revenue sources and potential new revenue options to support those services your city has determined are essential to its taxpayers. This guide is not an administrative manual – for that level of detail, you should refer to resources such as the Department of Revenue's *Property Tax Levies Operations Manual* or the *Tax Reference Manual on State and Local Taxes*.

The *Revenue Guide for Washington Cities and Towns* has been one of MRSC's core publications for many years. It was first published in 1992 with an update released in 2009. The current edition was completely rewritten and re-organized in 2019 to help clarify the multitude of often confusing revenue options, as well as to include new and additional revenue sources that were not addressed previously.

This publication has been written and researched by MRSC consultants, and any conclusions within this document are MRSC's and MRSC's alone. The primary authors are Toni Nelson, Government Finance Consultant, and Steve Hawley, Senior Communications Coordinator, with the final graphics and document assembly by Marissa Roesjadi, Senior Designer. Subsequent publication and graphics updates have been provided by Angela Mack, Graphic Designer.

The Center for Government Innovation of the State Auditor's Office contributed funding for the 2019 re-write, as well as valuable review and feedback. We would particularly like to thank Kristen Harris and Sherrie Ard at SAO for their review and assistance throughout this process. We would also like to thank Alice Ostdiek at Stradling, Yocca, Carlson & Rauth, P.C. for her review of the property tax chapter, as well as all other individuals who provided feedback and assistance.

If you have any questions, comments, concerns, or suggestions regarding this document, please contact MRSC.

How to Use this Document

MRSC's *Revenue Guide for Washington Cities and Towns* is intended to help city staff members and elected officials better understand their existing revenue sources and potential options for new revenues. The document is organized by type of revenue:

- Property taxes
- Sales and use taxes
- Business and utility taxes & fees
- Lodging taxes (hotel/motel tax)
- Real estate excise taxes (REET)
- Other excise taxes
- “State-shared” revenues
- Other revenue sources
- Special taxing districts

However, there is also an appendix that provides a “menu” of the major revenue sources by program area, such as transportation revenues, police and criminal justice revenues, or unrestricted revenues.

We also provide a basic history of local taxing powers in Washington, as well as a series of in-depth questions to help you evaluate potential new revenue sources, whether voted or non-voted.

This document is designed to be viewed electronically or printed as a hard copy. However, viewing this document electronically will provide you with maximum interactivity and functionality. (We recommend Adobe's free [Acrobat Reader](#) software program to ensure all features work correctly.)

If you are viewing this document electronically, the table of contents is interactive, which allows you to click on any topic and go directly to that page. At any time, you can return to the table of contents using the navigation button at the bottom of each page. Throughout this guide, you will also find many hyperlinks that will take you to other sections of the document or online resources such as RCWs or helpful resources.

You can also use Ctrl-F (Windows) or Command-F (Mac) to search for specific keywords within this document.

MRSC will update this publication each year as needed to reflect new legislation, changes in interpretation made by court decisions or Attorney General opinions, and other changes as appropriate. To make sure you are using the most up-to-date version of this publication, please visit mrsc.org/publications. There is a revision history near the beginning of this document that summarizes the recent changes.

If you have any questions, comments, concerns, or suggestions regarding this document, please contact MRSC.

A Brief History of Local Taxing Power in Washington¹

Local governments in Washington State do not possess inherent taxing authority and must obtain the authority to impose taxes and fees from the state constitution and/or statutes adopted by the state legislature.

At the most basic level, there are two categories of taxes in Washington: property taxes and excise taxes. Property taxes are the oldest form of taxation in Washington and are the largest single revenue source for many local governments. Excise taxes are the broadest category of taxes and represent all other forms of taxes except for property tax, with sales taxes being the most significant excise tax for local governments.

The history of local government taxing power in Washington dates back to territorial days, and up until the early 1930s property taxes were the predominate form of revenue. The first state legislative session in 1890 also authorized first, second, third, and fourth class cities to impose business license taxes, and by 1932 Seattle was levying an occupation tax which is believed to be the first instance of a city imposing a business & occupation (B&O) tax.

During the Great Depression of the 1930s, significant changes were made to the array of taxes that were imposed by Washington State, some of which significantly impacted local government. The first change was placing a limit on the cumulative rate of property taxes that could be imposed upon the taxpayer in any given year – people’s Initiative 64, which reduced property taxes by almost 50%. This resulted in the second most significant change in state taxing power – the imposition of a variety of excise taxes. The Revenue Act of 1935 reduced the state’s dependency upon property tax by authorizing a wide array of excise taxes, including a retail sales tax and new business and occupation taxes.

However, this additional excise authority was only granted to the state. It was not until 1970 that the state finally provided legislative authority to cities and counties allowing them to impose a sales and use tax of 0.5% for general local government purposes. In 1982, the legislature authorized cities and counties to impose a second 0.5% on retail sales for general government purposes, resulting in a combined total of 1% that is still in place today. During this same legislative session, there were new restrictions placed on cities’ authority to impose B&O and utility taxes. These significant changes in taxing authority provided many local governments with opportunities to diversify their revenue streams.

Over the course of the past several decades, the state legislature has authorized cities and towns to impose other sales taxes and excise taxes for specific purposes, all of which will be discussed in the following pages of this *Revenue Guide*.

Property taxes and excise taxes are imposed differently – property taxes are based upon changing property values and must be re-calculated and re-imposed every year, while excise taxes, once adopted, remain in effect on all taxable events that occur now and in the future.

¹ This information comes primarily from *The Closest Governments to the People: A Complete Reference Guide to Local Government in Washington State*, by Steve Lundin and edited by the Division of Governmental Studies and Services at Washington State University. A copy of the full document is posted on the MRSC website.

Property taxes have also seen a number of additional restrictions over the past century, beyond the cap on the cumulative property tax rate adopted in the 1930s. In 1971, a “106% levy lid” on property tax increases from one year to the next was enacted, which limited the total amount of property tax revenue local governments could generate each year. In 2001, voters approved Initiative 747, ultimately resulting in legislation that reduced the limit on annual increases for property tax levies to 1% – also known as the “101% levy lid,” which is still in effect today.

In addition to property taxes and excise taxes, many analysts recognize a third category of taxes: income taxes, which have been imposed by the vast majority of states as well as a number of cities around the country. However, income taxes are not currently used at either the state or local levels in Washington. At the same time that voters placed the first restrictions on property taxes during the Great Depression, voters also approved a statewide graduated income tax (Initiative 69). However, a divided state Supreme Court soon struck the initiative down as unconstitutional, ruling that an income tax was a property tax and that, as such, a graduated income tax violated the uniformity clause of the state constitution.² Later attempts to establish an income tax were also unsuccessful. In 1984, the state legislature enacted [RCW 36.65.030](#), which prohibits any city or county from levying a tax on “net income.”

Local government revenues have evolved significantly throughout Washington’s history and continue to do so today. This *Revenue Guide* provides the most current and up-to-date information, but each legislative session brings new thoughts, ideas, and concepts that result in changes and additional options. We will update this guide as needed to reflect those changes.

2 This interpretation has been criticized by legal scholars.

Key Considerations for Evaluating Revenue Sources

There are several factors to consider when analyzing if it's in the city's best interests (both fiscal and political) to impose new taxes and fees. Local governments cannot necessarily provide all of the services requested by the public, and of all the revenue options available, there are some that will meet your city's goals and objectives and others that will not.

To that end we have provided a list of key questions to consider when identifying and evaluating potential revenue sources. Answering these questions can help you more clearly articulate your city's revenue goals.

- **What do you need the revenue for?** Some revenue sources are unrestricted and may be used for any lawful governmental purpose. Others are restricted to specific purposes under state law. Some may be imposed permanently, while others are temporary. Are you looking to increase your general fund (current expense) budget or pay for basic governmental services, operations, or maintenance? Creating a new program or preparing for a major capital project? Bridging a temporary revenue shortfall or replacing lost funding? Are you planning to supplant (replace) existing funding and re-structure how a program is financed? If so, make sure you read the statutes carefully, as some revenue sources specifically restrict or prohibit supplanting.
- **How much revenue do you need to generate?** Your local revenue capacity depends on factors such as statutory limitations, your local economy, and your demographic profile. For instance, is your city largely residential, or does it have lots of businesses and retail sales? Do you have hotels and tourist attractions? How active is your real estate market?
- **Who will pay and who will benefit?** Will the taxes or fees be paid by local property owners? Businesses and utility companies? Shoppers? Tourists? Real estate buyers and sellers? Vehicle owners? Property developers? Will the revenue source result in an overall tax increase, or is it a credit against an existing state or county tax? Who will benefit from the additional spending?
- **Do you need voter approval?** If so, you must plan ahead and consider additional factors such as election timing, election costs, and voter turnout as described on the next page.
- **When do you need the revenue?** Some revenue sources have certain deadlines set by state statute. For instance, property taxes may only be levied once a year and must be certified to the county assessor by November 30 for the forthcoming year, while sales tax rates may only change on January 1, April 1, or July 1 and the state Department of Revenue must receive notice at least 75 days in advance. You may have to wait several months before you start receiving these additional revenues, or longer if you time it poorly. It pays to include this analysis in your planning process.
- **Is the revenue source subject to possible referendum?** You can't please everyone, but presumably you need a certain level of support from local residents or businesses. If your city has adopted powers of initiative and referendum, some revenue sources could be subject to referendum. Even if your city or town does *not* have powers of initiative and referendum, some revenue options are still subject to referendum as prescribed by statute.

- **What are the limitations?** For instance, property tax revenues are generally limited to a 1% annual increase, even if your assessed valuation is increasing faster than 1%, and certain property tax levies could potentially be reduced through prorationing. Sales taxes have no such limitations but can be significantly impacted during economic downturns. And “state shared” revenues could be reduced or eliminated during any legislative session, particularly if state revenues are declining.
- **Are there any unique statutory requirements?** Some revenue sources may have other specific statutory requirements – for instance, requiring revenue sharing with the county, requiring the creation of an advisory committee, establishing a slightly different tax base than usual, etc.

KEY CONSIDERATIONS FOR VOTED REVENUE SOURCES

If your revenue source requires voter approval, there are additional considerations, such as:

- **When is the filing deadline?** For voted revenue sources, you must consider not only the notification deadlines (such as certifying property taxes to your county assessor and notifying DOR of sales tax rate changes), but also the election dates and filing deadlines discussed below.

To ensure timely receipt of funds, you must work backwards. For instance, if you want to increase next year’s property tax revenues through a levy lid lift: property taxes must be certified to the county assessor no later than November 30, which means the levy lid lift must appear before voters no later than the general election in early November, which means you must file notice with the county auditor no later than the date of the primary election in early August. If you wait for “budget season” in August or September to start considering the levy lid lift, it will be too late – you will have missed the deadline, and any potential receipts from the levy lid lift will be delayed for an entire year.

For a summary of the various deadlines, see [Key Deadlines for Voted Property Taxes and Sales Taxes](#).

- **What are the approval requirements?** Does the ballot measure require a simple majority (50% plus one), such as a sales tax or levy lid lift? Or does it require a 60% supermajority, like bond measures, excess O&M levies, and certain EMS levies? Are there minimum validation (voter turnout) requirements?
- **When should the measure appear on the ballot?** There are four possible election dates for local governments in Washington – special elections in February and April, the primary election in August, and the general election in November ([RCW 29A.04.330](#)). Most measures may appear on the ballot at any one of those elections, but there are a couple exceptions (such as public safety sales taxes, which by statute may only appear at a primary or general election).

Voter turnout will almost certainly be highest in November and lowest in February and April, and the composition of the electorate may differ for some jurisdictions. Election timing may also affect election costs and the timing of receipts.

- **What other measures or candidates are appearing on the ballot?** Ask around to find out what other ballot measures may be appearing before your city’s voters. It’s possible you might not want to go head-to-head with certain ballot measures, as voters may not like voting on too many taxes at the same time. Alternatively, you might want to “ride the coattails” of a popular measure or candidate by appearing on the same ballot.

- **How have other ballot measures fared recently?** You can research local ballot measures across the state at MRSC’s [Local Ballot Measure Database](#), which we update after every election once counties certify the results. For revenue measures, you can filter by statutory authority (sales taxes, property taxes, levy lid lifts, etc.), government type (such as city or county), subject (fire protection, libraries, affordable housing, etc.), or even by county. You may want to contact jurisdictions that have attempted similar measures to gain their insight.
- **What will you do if the ballot measure fails?** Will you abandon your attempt or go back to the drawing board? Will you be forced to cut services or lay off employees? Will you submit a scaled-back version to voters in the hopes they will pass it next time?

Or will you submit the exact same measure to voters a second time, in the hopes that the result will be different due to changes in turnout, the composition of the electorate, enhanced public outreach by support groups, or news media coverage? For instance, some jurisdictions that place an item on the primary election ballot will file an identical (or very similar) resolution for the November general election. If the measure succeeds in August it is simply removed from the November ballot, but if it fails it will appear before voters again in November. It is not uncommon for a ballot measure that failed by several percentage points in a special or primary election to pass in the next general election, although passage is certainly not guaranteed.

- **How much will the election cost?** It costs money for counties to administer elections, and counties pass those costs along to the jurisdictions holding the elections (see [RCW 29A.04.410](#)). These costs include postage and printing for the ballots and voters’ pamphlets, temporary election workers and staffing, supplies, transportation, required elections notices, and administrative overhead costs.

If your city already has other city measures or candidates on the same ballot – such as city council/mayoral elections, which typically occur at primary and general elections in odd-numbered years³ – the additional costs for a ballot measure will be minimal. But if the city does not have other measures or candidates on the ballot and would not otherwise be conducting an election, the election costs will be significantly higher.

Election costs may also vary depending on whether you are submitting the measure at a special, primary, or general election. For example, special election costs may be higher than primary or general election costs because there are typically fewer local governments participating in special elections and sharing the costs. Contact your county auditor to get estimates.

- **What are the ballot title requirements?** The ballot title is the actual text of the measure that will appear on voters’ ballots. The ballot title must be written by the city attorney and must comply with [RCW 29A.36.071](#), including a 75-word limit for most measures. However, some revenue sources have additional ballot title requirements set by statute.
- **Will your city prepare informational materials?** [RCW 42.17A.555](#) prohibits city elected officials and employees from using “public facilities” to promote or oppose any ballot proposition. Broadly speaking, this means city staff and officials cannot support or oppose a ballot proposition during work hours, within their official capacities, or using city supplies, equipment, funds, or facilities. However, cities may prepare and distribute fact sheets or other informational materials for voters if such information is fair and objective and the city shares the information via normal, customary means of providing information. For more information, see our webpage on [Use of Public Facilities to Support or Oppose Ballot Propositions](#).

³ City officials are elected in odd-numbered years pursuant to [RCW 29A.04.330](#).

KEY DEADLINES FOR VOTED PROPERTY TAXES AND SALES TAXES

As mentioned previously, if you are considering a voted revenue increase you must plan ahead and keep the various statutory requirements and deadlines in mind. Here are key dates to remember.

- **Property tax levies** are set on an annual basis. All property taxes for the upcoming year must be certified to the county assessor no later than November 30 ([RCW 84.52.070](#)).
- **Sales tax rate changes** may only take place on January 1, April 1, or July 1, and may not take effect until 75 days after the state Department of Revenue receives notice of the change ([RCW 82.14.055](#)).

The election dates and filing deadlines are established by [RCW 29A.04.330](#). To place an item on the ballot for the February or April special elections, your jurisdiction must file the resolution at least 60 days before the election date. For the primary election, you must file the resolution no later than the Friday immediately before the first day of regular candidate filing in May. And for the general election, you must file the resolution no later than the date of the August primary election.

Below is a quick summary, assuming the city promptly notifies DOR of any sales tax changes and certifies its levy to the county assessor by November 30.

Election (RCW 29A.04.330)	Filing deadline (RCW 29A.04.330)	Approved sales tax increases take effect (RCW 82.14.055)	Approved property tax increases take effect (RCW 84.52.070)
February special	Early-to-mid December	July 1 of election year	Next year
April special	Late February	January 1 of next year	Next year
August primary	Early-to-mid May	January 1 of next year	Next year
November general	Date of August primary	April 1 of next year	Next year

Property Taxes

Property taxes are, for many cities, the primary source of revenue. Most of a city's property tax revenue comes from its general fund levy, which may be used for any lawful governmental purpose, but cities also have a few additional property tax options that may only be used for certain restricted purposes. This chapter will discuss the property tax authority provided to cities and towns.

Washington's "budget-based" property tax structure is very complicated. We plan to limit our discussion of property taxes to what city officials and staff members really need to know in order to develop property tax levy projections and to consider potential options, and even that is pretty complicated.

For a more detailed look at property taxes, refer to the state Department of Revenue's [Property Tax Publications](#), and particularly the [Property Tax Levy Manual](#).

WHAT IS A BUDGET-BASED PROPERTY TAX?

Perhaps the most important concept to understand regarding Washington's property tax system is that it is a "budget-based" property tax.

This means that cities and other taxing districts, as part of their annual budget process, must first establish the total dollar amount of property tax revenue they wish to generate for the upcoming year, subject to several restrictions. Once the total dollar amount is established, the county assessor calculates the levy rate – the rate that each property owner must pay – based on the total assessed valuation of all properties.

This "budget-based" process is the reverse of most other states in the country. Almost every other state uses a "rate-based" property tax system, in which governments establish the levy rate that each property owner must pay, which is then multiplied by the assessed value to determine the total dollar amount of revenues generated.

There are three main components to the property tax calculation: the levy amount, the assessed value, and the levy rate.

Levy Amounts vs. Levy Rates

To understand this budget-based system, and in particular the various limitations on how much property tax revenue local governments can generate, it is extremely important to understand the difference between *levy amounts* and *levy rates*. Some limitations are based on levy rates, while others are based on levy amounts, and the two are often confused.

The **levy amount** – sometimes referred to as simply the "levy" – is the total dollar amount of property taxes to be collected in one year. In the example on the next page, the levy amount is *\$1 million*.

The **levy rate** is how much any individual property owner owes, expressed as a dollar amount per \$1,000 assessed value. In the example, the levy rate is *\$2.50 per \$1,000 assessed valuation*.

Under the budget-based system, the city establishes its desired levy amount first, and then the county assessor uses the assessed valuation (discussed in more detail below) to calculate the subsequent levy rate. This formula is expressed as:

$$\text{Levy Amount} \div (\text{Assessed Value} \div 1,000) = \text{Levy Rate per } \$1,000 \text{ AV}$$

For example:

Levy amount requested by city for general fund	÷	(Citywide assessed value ÷ 1,000)	=	Levy rate
\$1 million	÷	(\$400 million ÷ 1,000 = \$400,000)	=	\$2.50 per \$1,000 AV

However, there are multiple restrictions placed on how fast the levy *amount* can increase, as well as maximum levy *rates* for individual levies (such as general fund levies or EMS levies) and maximum *aggregate (combined) levy rates*. These restrictions are all intended to protect citizens from excessive taxation, but they also limit the amount of property tax revenue that local governments can generate. The property tax process can be complicated and confusing, but we will do our best to explain it in more detail throughout this chapter.

Assessed Value

The other primary factor in determining the levy rate each year is the assessed value. Property taxes are assessed and collected at the county level. The amount that each property owner pays, and the total property tax revenue a city can generate, depends in large part on the value of the properties within the city, known as the **assessed value** or **assessed valuation** and commonly abbreviated as **AV** or **AV**.

The assessed valuation is the true and fair value as provided in Article VII, §2 of the WA State Constitution and further defined in [Chapter 458-07 WAC](#), which states that “true and fair value” means market value and is the amount of money a buyer of property would pay to a willing seller.

The county assessor’s office is responsible for assessing all property located wholly within the county, including both the incorporated areas (cities and towns) and the unincorporated areas of the county. In determining true and fair value, the assessor may use a sales (market data), cost, or income approach, or a combination of the three approaches ([WAC 458-07-030](#)). In addition, the state Department of Revenue is responsible for assessing intercounty, interstate, and foreign utility company property (known as **state-assessed utilities**).

Counties must update assessed valuations for all properties every year, with physical inspections of each property at least once every six years ([RCW 84.41.030](#) and [84.41.041](#)). Most counties conduct inspections on a six-year cycle, meaning that they inspect roughly one-sixth of the properties within the county each year and update their assessed values accordingly. A few counties use a four-year inspection cycle and inspect roughly one-quarter of the properties each year.⁴ The annual revaluations in between each inspection are estimates based on statistical analysis and market data.

⁴ As of 2016, 35 counties inspected properties on a six-year cycle, while four counties (Chelan, Ferry, Pend Oreille, and Wahkiakum) used a shorter four-year inspection cycle.

The levy rate for any taxing district must be uniform for each property within its boundaries (article VII, section 2 of the Washington State Constitution). That is to say, a city's general fund levy rate per \$1,000 AV must be the same for each property within the city.⁵

State law also establishes a separate valuation system for certain agricultural, timber, and open space land based on "current use" value, which is lower than the "true and fair value."⁶ In addition, all properties owned by federal, state, tribal, and local governments (municipal corporations); public and private schools; and churches are exempt from property taxes.

The county assessor must notify each taxing district within the county, including every city and town, of its total assessed value before November 30, so the taxing district can calculate its levy amounts for the upcoming year and certify them to the county assessor by November 30 (see [Annual Levy Certification Process](#)).

5 However, there may be some exceptions for senior, disabled, or low-income residents. There are also certain tax abatement programs that reduce a property's taxable value to provide financial incentives for economic development or historic preservation.

6 Current use values are permitted under article VII, section 11 of the Washington State Constitution. See also [chapter 84.34 RCW](#) and [chapter 458-30 WAC](#).

MAXIMUM AGGREGATE LEVY RATES

There are several different limitations on the maximum levy rate (per \$1,000 AV) that cities and other local governments may impose on property located within their jurisdiction. Some of the limits are aggregate and limit the total property tax burden on property owners, while others establish maximum levy rates for specific types of levies such as the city general fund levy or EMS levies.

This section will discuss the aggregate (total combined) levy limitations. The rest of the property tax chapter contains information on the various types of levies and their maximum levy rates.

Tax Code Areas

To understand maximum aggregate levy rates, it is important to understand the relationship and difference between “taxing districts” and “Tax Code Areas.”

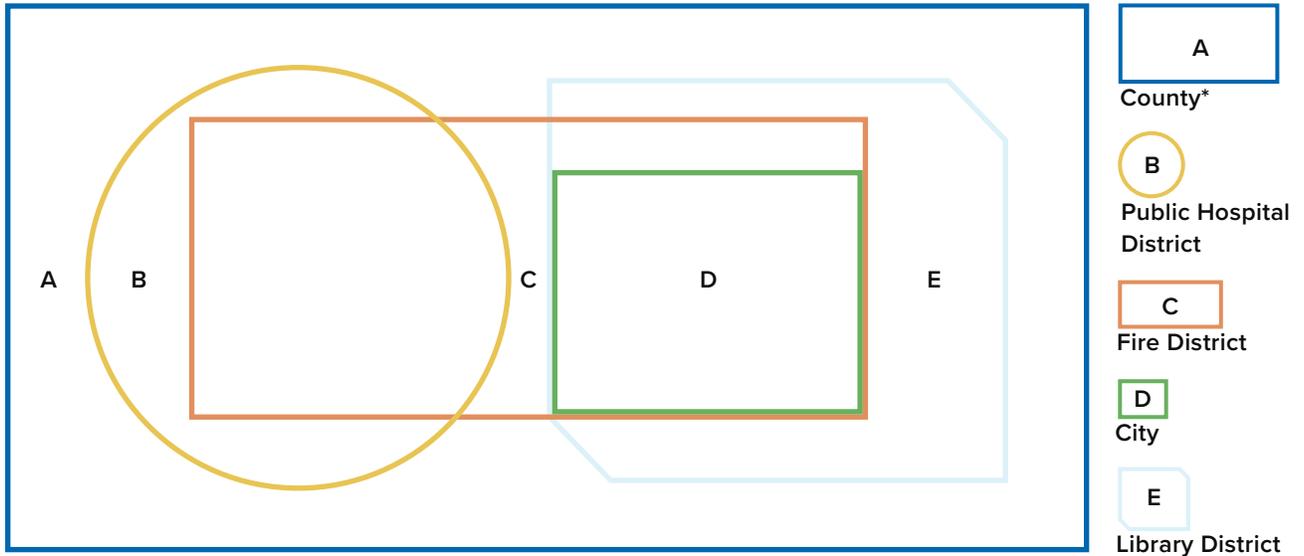
- **Taxing districts** are individual governmental units with property tax authority, such as a county, city, fire protection district, or library district. Governmental units *without* property tax authority (such as public transportation benefit areas) are not considered taxing districts for these purposes.
- **Tax Code Areas**, or **TCA**s, are unique combinations of overlapping taxing districts.

To demonstrate how multiple taxing districts overlap to form unique Tax Code Areas, see the example on the next page. This example shows a hypothetical county with a city and several taxing districts (fire, library, and public hospital). The districts overlap to form seven different Tax Code Areas, no two of which are the same. (Note that the county itself is actually two separate taxing districts – one for the current expense levy, which is imposed countywide, and one for the road levy, which is only imposed within unincorporated areas.)

Of course, in reality the picture is often much more complicated, as there are many additional taxing districts that may be involved such as school districts, park districts, cemetery districts, port districts, public utility districts, EMS districts, and more. But the same general principles will still apply.

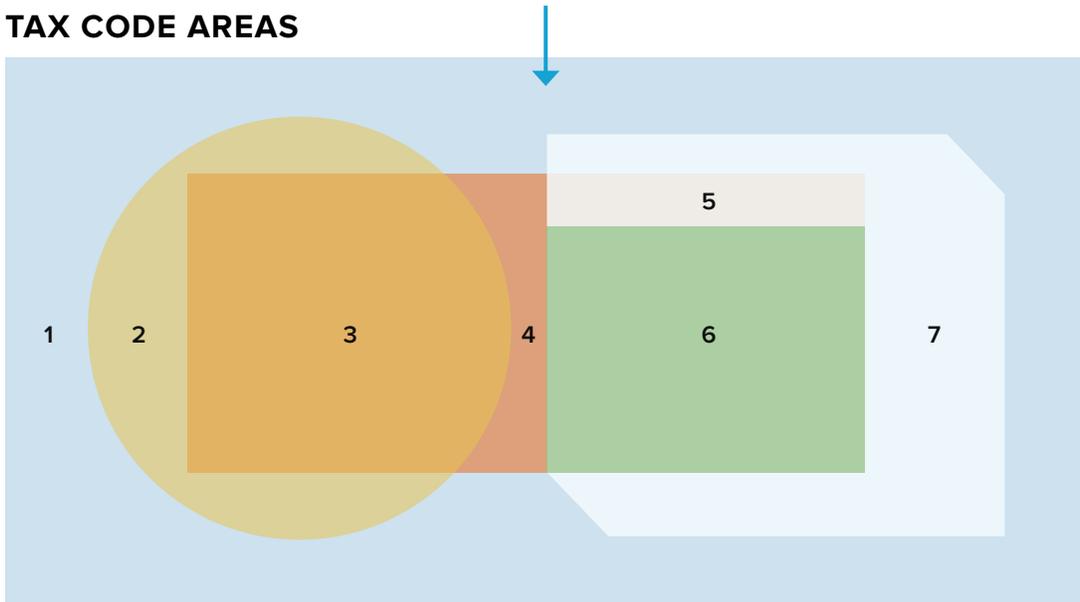
According to the state Department of Revenue, there are approximately 3,300 unique Tax Code Areas throughout the state as of 2018, ranging anywhere from five within Garfield County to over 550 within King County. The number of TCAs within each county depends on the number of taxing districts within that county, as well as how they overlap geographically, since each district may have different service boundaries.

TAXING DISTRICTS EXAMPLE



*County current expense levy is countywide, but county road levy is only in unincorporated areas

TAX CODE AREAS



Taxing District	Belongs to Tax Code Area(s)						
	1	2	3	4	5	6	7
County Current Expense	X	X	X	X	X	X	X
County Road	X	X	X	X	X		X
City						X	
Fire District			X	X	X	X	
Public Hospital District		X	X				
Library District					X	X	X

Since Washington uses a budget-based property tax system (see [What is a Budget-Based Property Tax?](#)), each taxing district establishes its desired levy amount for the upcoming year during the budget process. The levy rate for that taxing district is then calculated based on the assessed valuation within that taxing district.

Once the levy rate has been determined for each taxing district, the levy rates are added together within each TCA. This provides a total (aggregate) levy rate that each property owner within the TCA must pay.

As noted earlier, the levy rate per \$1,000 AV for any individual taxing district (city, county, etc.) must be uniform throughout the district, meaning each property owner pays the same rate. Similarly, the aggregate (total combined) levy rate within each Tax Code Area also must be uniform.⁷

However, different properties within a single city may belong to different Tax Code Areas, and the aggregate levy rate may vary considerably between TCAs. For instance, Bothell lies partially within King County and partially within Snohomish County. The city's levy rate must be the same for every property within the city, regardless of which county the property is located in. However, the counties will almost certainly have different property tax rates, which means the taxpayers within the King County portion of the city will pay a different aggregate levy rate than those taxpayers in the Snohomish County portion of the city.

State law and the state constitution have established two limitations on the maximum aggregate levy rate within any individual Tax Code Area: the \$10 constitutional limit (which includes both the state and local governments) and the \$5.90 local government limit (which applies to most, but not all, local government levies).

\$10 Constitutional Limit

Article 7, section 2 of the Washington State Constitution (also codified at [RCW 84.52.050](#)) limits the total regular property tax rate on any individual property (i.e., within any individual Tax Code Area) – including state, county, city, and most local government property taxes – to 1% of the property's true and fair value. Since the levy rate is expressed as a dollar amount per \$1,000 assessed value, and since 1% of a property's value is equivalent to \$10.00 per \$1,000 assessed value, this is often referred to as the \$10 limit.

To limit the confusion between the aggregate levy rate limit and the 1% inflation increase allowed each year (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)), we will refer to the constitutional levy rate limit as the \$10 limit.

Almost every property tax levy in the state is subject to the \$10 constitutional limit. However, the state constitution establishes three important exceptions:

- Port districts and public utility districts are exempt from the \$10 limit.
- Any taxing district may exceed the \$10 limit with a voter-approved "excess levy" for maintenance and operations purposes, which for cities and most other jurisdictions⁸ may only be approved one year at a time (see [Excess Levies \(Operations & Maintenance\)](#)).
- Any taxing district may exceed the \$10 limit for the repayment of voter-approved general obligation debt, until the debt is repaid (see [G.O. Bond Excess Levies \(Capital Purposes\)](#)).

⁷ This does not mean the tax bill is the same for all property owners, however. The levy rate is multiplied by the assessed value for each individual property to determine the tax bill. Since different properties have different assessed values, each property owner within the same Tax Code Area must pay the same levy rate but will owe a different amount of tax.

⁸ Fire districts and school district are the only local governments authorized to impose a multi-year excess levy. All other taxing districts, including counties, cities, and towns, may only impose one-year excess levies.

Everything under the \$10 limit is generally referred to as a “regular” levy. Any levies above the \$10 limit, which require voter approval, are generally referred to as “excess” levies. The term “special” may be used to describe any regular or excess levy that is levied for a specific purpose.

Of this \$10, no more than \$3.60 may be imposed by the state⁹ ([RCW 84.52.065](#)) and no more than \$5.90 may be used by most local governments (see below). That adds up to a maximum of \$9.50, which leaves at least \$0.50 extra that may be used for certain local government levies outside the \$5.90 limit.¹⁰

\$5.90 Local Limit

By statute, the aggregate (total) regular levy rate for most local governments combined – including “senior taxing districts” such as cities and counties, as well as “junior taxing districts” such as fire districts and park districts – may not exceed \$5.90 per \$1,000 assessed valuation within any individual Tax Code Area ([RCW 84.52.043](#)). This \$5.90 limitation is a subset of the \$10 constitutional limit – in other words, all levies that are subject to the \$5.90 statutory limit are also subject to the \$10 constitutional limit.

However, this statute also provides several exemptions. The following local levies *are* subject to the \$10 constitutional limit but are *not* subject to the \$5.90 local limit:

- Affordable housing levies
- County conservation futures levies
- County criminal justice levies
- County ferry district levies
- Emergency medical services (EMS) levies
- Up to \$0.25 of a fire district or regional fire authority levy, if protected from prorationing by the legislative body
- Regional transit authority levies (Sound Transit)

There are also a few other, narrower exemptions, including certain flood control zone levies, a portion of metropolitan park district levies for metropolitan park districts with a population of 150,000 or more (with voter approval), and King County’s transit levy.

There are four types of local government levies that are not subject to either the \$5.90 or \$10 limits:

- General obligation (G.O.) bond excess levies
- Excess maintenance & operation levies
- Port district levies
- Public utility district levies

⁹ In 2017 and 2018, the state Legislature temporarily adjusted the state levy rate to provide additional funding for the state’s share of K-12 education. The maximum levy rate in 2019 is \$2.40/\$1,000 AV and in 2020 and 2021 is \$2.70/\$1,000 AV. In 2022, the maximum rate returns to \$3.60/\$1,000 AV.

¹⁰ In reality, there will be more than \$0.50 available if the state is levying less than its maximum \$3.60 and/or the local districts are levying less than the maximum \$5.90.

The chart below demonstrates both the \$10 constitutional and \$5.90 local government limits.



Levies above \$10 limit:

- Excess levies (annual O&M or for repayment of U.T.G.O. bonds)
- Port and PUD levies

Remaining levy capacity available for:

- EMS levies
- Affordable housing levies
- County criminal justice, conservation futures, ferry, and transit levies
- Regional transit authority levies
- Protected portions of metropolitan park district, fire district, regional fire authority, and flood control zone district levies

\$5.90 limit–includes:

- City regular levy
- County current expense and road levies
- Cultural access program levies
- Most metropolitan park district levies
- Most special purpose district levies except ports and PUDs

Prorationing

Once each taxing district establishes its desired levy amount for the upcoming year, no later than November 30, the county assessor calculates the levy rate for each taxing jurisdiction based on the assessed valuation within that jurisdiction. The county assessor then adds up the levy rates for each Tax Code Area.

If either the \$10 constitutional limit or the \$5.90 statutory limit is exceeded within any individual Tax Code Area, the county assessor must reduce the local levies to \$10 or \$5.90 according to the statutory formula found in [RCW 84.52.010](#), a process known as “prorationing.” Prorationing essentially establishes a levy hierarchy, and levies on the lowest rungs of the ladder are reduced or eliminated until the \$10 or \$5.90 limit is no longer exceeded. The formulas for prorationing depend on which limit – \$10 or \$5.90 – was exceeded. (Remember that certain levies are exempt from the \$5.90 or \$10 limitations and are not counted for those purposes.)

First, the county assessor must check to make sure that the \$5.90 local limit has not been exceeded within any Tax Code Area. If the \$5.90 limit has been exceeded, the assessor must reduce the affected levies to a total combined rate of \$5.90.

After the assessor has checked the \$5.90 limit and, if necessary, conducted any prorationing, the assessor must then make sure the \$10 constitutional limit has not been exceeded. If the \$10 limit has been exceeded within any Tax Code Area, the assessor must reduce the affected levies to a total combined rate of \$10.

The prorationing order for both the \$5.90 and \$10 limits is shown on the next page. In general, the city general fund levy is protected from prorationing. However, some other city levies may be subject to prorationing.

Since the levy rate within each taxing district must be uniform, any taxing district affected by prorationing must reduce its levy throughout the entire district, and not just within the affected Tax Code Area.

For a more detailed discussion of prorationing, including examples, refer to the [DOR Levy Manual](#).

Property Tax Prorationing Order (RCW 84.52.010)

\$5.90 reductions take place first, followed by \$10 reductions

Levy Type	\$5.90 Reduction Order	\$10 Reduction Order
(a) County road levy shift* (b) City fire pension levy* – only if city is annexed to fire/library district	1st	1st
Flood control zone district – up to \$0.25 if protected under RCW 84.52.816	—	2nd
King County transit levy	—	3rd
(a) Fire protection district – up to \$0.25 if protected under RCW 84.52.125 (b) Regional fire authority – up to \$0.25 if protected under RCW 84.52.125	—	4th
County criminal justice	—	5th
County ferry district	—	6th
Metropolitan park district of 150,000+ population – up to \$0.25 if protected under RCW 84.52.120	—	7th
(a) County land conservation futures (b) Affordable housing (c) EMS – first \$0.20	—	8th
EMS – remaining \$0.30	—	9th
Cultural access program	2nd	10th
(a) Park and recreation district (b) Park and recreation service area (c) Cultural arts, stadium, and convention district (d) City transportation authority (monorail)	3rd	11th
Flood control zone district – portion not protected under RCW 84.52.816	4th	12th
(a) Public hospital district – first \$0.25 (b) Metropolitan park district – first \$0.25, if not protected under RCW 84.52.120 (c) Cemetery district (d) All other junior taxing districts not otherwise mentioned in this chart	5th	13th
Metropolitan park districts created in 2002 or later – remaining \$0.50	6th	14th
(a) Fire protection district – \$1.00 under RCW 52.16.140/RCW 52.16.160 , if not protected under RCW 84.52.125 (b) Regional fire authority – \$1.00 under RCW 52.26.140(1)(b) and (1)(c) , if not protected under RCW 84.52.125	7th	15th
(a) Fire protection district – \$0.50 under RCW 52.16.130 (b) Regional fire authority – \$0.50 under RCW 52.26.140(1)(a) (c) Library district (d) Public hospital district – remaining \$0.50 (e) Metropolitan park districts created in 2001 or earlier – remaining \$0.50	8th	16th
(a) County current expense levy (b) City regular (general fund) levy (c) County road levy	9th	17th
Regional transit authority	—	
State school levies	—	18th
(a) Port district (b) Public utility district (c) Excess levy (d) G.O. bond levy	—	—

* Not officially considered “prorationing” under [RCW 84.52.010](#). However, neither a road levy shift (see [RCW 84.52.043](#)) nor a city firefighters’ pension fund levy (if the city is annexed to a library district, fire district, or regional fire authority – see [RCW 41.16.060](#)) may cause any other taxing district to have its levy reduced. These levies must be reduced, eliminated, or “bought down” before prorationing takes place.

Buy-Down Agreements

If either the \$5.90 or \$10 limits are going to be exceeded, state law allows taxing districts to potentially reduce the impacts of prorationing through the use of levy “buy-down” agreements ([RCW 39.67.010](#) and [RCW 39.67.020](#)). A buy-down agreement allows a taxing district to avoid prorationing by paying another taxing district to reduce its levy so that the \$5.90 or \$10 levy limits are no longer exceeded.

If a city levy is in danger of being reduced or eliminated through prorationing, the city can potentially buy down the levy rate of a smaller taxing district (such as a park district or cemetery district) within the affected Tax Code Area. We suggest buying down the levy rate of the jurisdiction with the lowest assessed valuation, which will minimize the city’s buy-down costs.

A levy buy-down also may be politically prudent in case a city levy increase, such as a levy lid lift, might cause the levy of a junior taxing district to be reduced through prorationing.

If a buy-down agreement is signed, the city must notify the governing bodies of every taxing district whose property tax levy could be adversely impacted by the agreement.

For examples of buy-down agreements, visit MRSC’s [Sample Document Library](#).

REGULAR LEVY (GENERAL FUND)

Quick Summary

- Primary source of property tax revenues for cities – revenues are unrestricted and may generally be used for any lawful governmental purpose.
- Maximum levy rate varies between \$1.60 and \$3.825 depending on whether city is annexed to a fire district/library district, participates in a regional fire authority, and/or has a fire pension fund.

RCW: [84.52.043\(1\)](#); other statutes may apply

The general fund levy – often referred to as simply the “regular” property tax levy – is the primary source of property tax revenue for any city or town.¹¹ The maximum levy rate depends on whether the city is annexed to a fire protection district or library district, participates in a regional fire authority (RFA), or has a pre-LEOFF firefighter’s pension fund.¹²

- **If your city IS NOT annexed to a fire district or library district and does not participate in a regional fire authority:** Your maximum levy rate is \$3.375 per \$1,000 assessed value ([RCW 84.52.043\(1\)](#)).
- **If your city IS annexed to a fire district or library district or participates in a regional fire authority:** Your maximum levy rate is \$3.60 per \$1,000 assessed value, minus the actual regular levy rate(s) imposed that year by those districts that the city is annexed to.¹³ Fire districts and regional fire authorities have a maximum regular levy rate of \$1.50,¹⁴ while library districts have a maximum regular levy rate of \$0.50.¹⁵ Depending on which districts your city is annexed to and what their levy capacity is, your city’s levy rate may be reduced as low as \$1.60.
 - Note:** Your city levy rate is *not* impacted by any library/fire excess levies, voted general obligation bond levies, or fire district EMS levies.
- **If your city has a pre-LEOFF firefighters’ pension fund:** You may impose an additional levy of up to \$0.225 on top of the rates listed above ([RCW 41.16.060](#)). The use of these funds has been extended to include LEOFF 1 medical benefits, and the city’s fire pension levy authority will expire when there are no longer any pre-LEOFF or LEOFF 1 retiree medical obligations remaining.

See the table on the next page for a summary.

11 Technically speaking, most local government levies (except for voted excess levies) are considered to be “regular” levies. This includes some other levies that may be imposed by cities, such as EMS levies. See the definition in [RCW 84.04.140](#).

12 The firefighters’ pension fund levy under [RCW 84.52.763](#) and [RCW 41.16.060](#) is available to all cities and towns that had a regularly organized, full-time, paid fire department employing firefighters entitled to benefits under a pension system in existence before March 1, 1970 – the date that the statewide Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF) took effect.

13 See [RCW 84.52.769/RCW 52.04.081](#) for fire protection districts, [RCW 84.52.044](#) for regional fire authorities, and [RCW 27.12.390](#) for library districts.

14 The maximum fire protection district levies are provided in [RCW 52.16.130](#), [RCW 52.16.140](#), and [RCW 52.16.160](#). The maximum regional fire authority levies are provided in [RCW 52.26.140](#). However, the maximum levy rates will be reduced to \$1.00 if the fire district/RFA imposes fire benefit charges (see [RCW 52.18.065](#) and [RCW 52.26.240](#)).

15 The maximum library district levies are provided in [RCW 27.12.050](#), [RCW 27.12.150](#), and [RCW 27.12.420](#).

Summary of Maximum Regular (General Fund) Levy Rates for Cities

City is:		Maximum levy rate per \$1,000 AV	
Annexed to library district?	Annexed to fire district/RFA?	Without fire pension fund	With fire pension fund
No	No	\$3.375	\$3.60
Yes	No	\$3.10* <i>(\$3.60 minus \$0.50 library levy)</i>	\$3.325* <i>(\$3.60 plus 0.225 fire pension levy minus \$0.50 library levy)</i>
No	Yes	\$2.10* <i>(\$3.60 minus \$1.50 fire levy)</i>	\$2.325* <i>(\$3.60 plus \$0.225 fire pension levy minus \$1.50 fire levy)</i>
Yes	Yes	\$1.60* <i>(\$3.60 minus \$1.50 fire levy minus \$0.50 library levy)</i>	\$1.825* <i>(\$3.60 plus \$0.225 fire pension levy minus \$1.50 fire levy minus \$0.50 library levy)</i>

* Maximum "safe" levy rate, assuming fire/library districts levy their maximum rates.

Note that this table shows the maximum "safe" levy rates, assuming that the fire district, library district, and/or regional fire authority levies its maximum possible rate. For instance, if your city does not have a firefighters' pension levy and is annexed to a fire district that only levies \$1.00, your maximum statutory levy rate will increase to \$2.60 per \$1,000 AV (\$3.60 minus \$1.00). Likewise, if your city has a firefighter's pension fund and is annexed to a library district that only levies \$0.30, your maximum statutory levy rate will increase to \$3.525 per \$1,000 AV (\$3.60 minus \$0.30 plus \$0.225).

While this might provide your city with extra revenue potential, you should proceed cautiously. If your city levy rate is higher than the "safe" levy rate, you may be forced to reduce your levy in the future if the fire/library district or RFA increases its levy rate. This can cause significant fiscal distress if the city had not strategically anticipated the possibility.

Use of Revenues

General fund levy revenues are generally unrestricted and may be used for any lawful governmental purpose, with two possible exceptions:

- **Levy lid lifts.** If voters approved a levy lid lift (see [Levy Lid Lifts](#)) for the general fund where the revenues were authorized for a specific purpose, the extra revenue resulting from the levy lid lift must be used for the purpose(s) stated in the ballot measure.
- **City fire pension levy.** While this is considered part of the general fund levy, the extra levy rate up to \$0.225 is restricted for the firefighters' pension fund unless the city has a qualified actuary make a determination that all or part of the additional levy is unnecessary to meet the requirements of the pension fund, in which case the levy may be omitted, reduced, or used for any other municipal purpose.

If the city no longer has any pre-LEOFF firefighter beneficiaries receiving benefits, the levy may be used for LEOFF 1 medical benefits ([RCW 41.26.150\(1\)](#)), and any amount remaining after the LEOFF 1 medical benefits may be spent for any other municipal purpose. The city's fire pension levy authority will expire when there are no longer any LEOFF 1 retiree medical obligations remaining.

1% Annual Levy Limit

The general fund levy is subject to the 1% annual "levy lid" (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)). If your city's assessed value is increasing more than 1% per year, excluding new construction and state-assessed utilities, your levy rate will begin to decrease as a result. However, if you are levying less than your statutory maximum rate, your city can potentially increase its regular levy above the 1% annual levy lid using non-voted banked capacity (if available – see [Banked Capacity](#)) or a voted levy lid lift (see [Levy Lid Lifts](#)).

Prorationing

The general fund levy is subject to both the \$5.90 local limit and \$10 constitutional limit (see [Maximum Aggregate Levy Rates](#)). However, it is among the very last levies that would be ever subject to prorationing. In the event that either the \$5.90 or \$10 constitutional limits are exceeded, there should be no impact on the city general fund levy.

However, the firefighters' pension levy (for those few cities that levy it) does not have the same protection. If the city is annexed to a library district or fire protection district, [RCW 41.16.060](#) states that the city may not levy the firefighters' pension tax if it causes the combined levies of all taxing districts to exceed the \$5.90 or \$10 limits. This provision does not apply to cities that are not annexed to a library district or fire protection district.¹⁶ If the city is annexed and either the \$5.90 or \$10 limits are exceeded, the fire pension levy must be reduced, eliminated, or "bought down" before any prorationing can be calculated by the county assessor.

¹⁶ To understand why, consider that the general fund statutory maximum levy rate for a city that has a firefighters' pension fund and is not annexed is \$3.60 per \$1,000 AV (\$3.375 plus \$0.225). If the city is annexed, on the other hand, the maximum combined levy rate for the city, fire district, and library district combined increases to \$3.825 per \$1,000 AV (\$3.60 plus \$0.225).

AFFORDABLE HOUSING LEVY

Quick Summary

- Property tax – additional levy up to \$0.50 per \$1,000 assessed valuation.
- Revenues restricted to finance affordable housing for “low-income” and “very low-income” households.
- Requires simple majority voter approval.
- Subject to \$10 constitutional limit but not \$5.90 limit.

RCW: [84.52.105](#)

Any city or town may impose a property tax levy up to \$0.50 per \$1,000 of assessed valuation to finance affordable housing for “very low-income” households and affordable homeownership for “low-income” households ([RCW 84.52.105](#)). The levy may be imposed each year up to 10 consecutive years and requires voter approval.

Counties also have similar authority under the same statute, but the combined city/county levy rate may not exceed \$0.50 per \$1,000 AV.

Use of Revenues

Originally, the revenues could only be used to finance affordable housing for very low-income households. The statute defines “very low-income household” as:

[A] single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income, as determined by the United States department of housing and urban development, with adjustments for household size, for the county where the taxing district is located.

Effective October 1, 2020 the state legislature also authorized the revenues to be used for affordable homeownership, owner-occupied home repair, and foreclosure prevention programs for “low-income households.” The definition of “low-income household” is identical except that households are eligible if their income is at or below 80% of the county median income.

Before imposing the levy, the city must declare the existence of an emergency with respect to the availability of affordable housing for low-income or very low-income households within its jurisdiction and adopt an affordable housing finance plan for the expenditure of the levy funds to be raised. The adopted plan must be consistent with either the locally adopted or state-adopted comprehensive housing affordability strategy, required under the National Affordable Housing Act ([42 U.S.C. Sec. 12701](#)).

Ballot Measure Requirements

An affordable housing levy must be approved by a simple majority vote, and there are no validation/minimum voter turnout requirements. The statute does not specifically address when this levy may be presented to the voters, which leads us to conclude that the ballot measure can be presented at any special, primary, or general election.

According to MRSC’s [Local Ballot Measure Database](#), Bellingham and Vancouver are the only two cities that have presented this levy to the voters in recent years, and both were successful (although other cities have used levy lid lifts, sales taxes, or other revenue sources for affordable housing purposes).

1% Annual Levy Lid Limit

The affordable housing levy is subject to the 1% annual “levy lid” (see [The 1% Annual Levy Lid Limit \(“101% Limit”\)](#)). If your city’s assessed value is increasing more than 1% per year, excluding new construction and “add-ons,” your levy rate will begin to decrease as a result. However, since affordable housing levies are temporary and will expire after no more than 10 years, the 1% levy lid is probably not a big concern. Any adjustments to produce more revenue can be made in the reauthorization ballot measure.

Prorationing

The affordable housing levy is not subject to the \$5.90 local limit, but it is subject to the \$10 constitutional limit and may be subject to prorationing if the \$10 limit is exceeded (see [Maximum Aggregate Levy Rates](#)). However, this levy is fairly high on the prorationing “ladder” and there are a number of other local government levies that would be reduced or eliminated prior to the affordable housing levy.

In the event that both a county, and a city or town within the county, pass affordable housing levies, the combined rates of these levies may not exceed \$0.50 per \$1,000 of assessed valuation in any area within the county. If the combined rates exceed \$0.50, the levy of the last jurisdiction to receive voter approval must be reduced or eliminated so that the combined rate does not exceed \$0.50.

CULTURAL ACCESS PROGRAM LEVY

Quick Summary

- Property tax – additional levy with maximum rate based on retail sales.
- Revenues are restricted and may only be used for specified cultural purposes.
- Subject to \$5.90 limitation and \$10 constitutional limit.
- Requires voter approval.

RCW: [84.52.821](#); [chapter 36.160](#)

Any city may impose an additional property tax levy for up to seven consecutive years to benefit or expand access to nonprofit cultural organizations ([RCW 84.52.821](#); [chapter 36.160 RCW](#)). The measure requires voter approval.

Every county except King County¹⁷ has similar authority under the same statute. The enabling legislation (see [RCW 36.160.030](#)) provided counties with the first right of refusal and did not allow a city to place this measure on the ballot unless either (a) the county adopted a resolution forfeiting its right, or (b) the county did not place such a proposition before the voters by June 30, 2017.

Since the 2017 deadline has passed, any city or town may now place a cultural access program levy on the ballot. While the statutory language is not entirely clear, it is our interpretation that a city and a county may *not* impose this levy concurrently. In other words, if the county has enacted this levy and created a cultural access program, no city within that county may impose this levy as long as the county's levy is in place. But if the county has not imposed such a levy, or if the county's levy expires and is not renewed, the city may submit this measure to voters.

While most of the provisions within [chapter 36.160 RCW](#) refer specifically to counties, not cities, [RCW 36.160.030](#) states that if a city creates a cultural access program, “all references in this chapter to a county must include a city that has exercised its authority under this subsection, unless the context clearly requires otherwise.”

Use of Revenues

The revenues must be used in accordance with [RCW 36.160.110](#), which is very detailed. Originally King County had separate funding criteria than the rest of the state, but effective June 11, 2020 all cities and counties statewide are subject to the same criteria. The funds may be used for a number of purposes related to cultural access programs, including start-up funding, administrative and program costs, capital expenditures or acquisitions, technology, and public school programs to increase cultural program access for students who live in the city.

A “cultural organization,” as defined in [RCW 36.160.020](#), must be a 501(c)(3) nonprofit corporation with its principal location(s) in Washington State and conducting a majority of its activities within the state. The primary purpose of the organization must be the advancement and preservation of science or technology, the visual or performing arts, zoology (national accreditation required), botany, anthropology, heritage, or natural history.

¹⁷ King County may only impose a cultural access program sales tax and may not impose a cultural access program levy. See [RCW 36.160.080\(1\)\(b\)](#).

State-related cultural organizations are eligible, but the funding may not be used for local or state government agencies, radio/TV broadcasters, cable communications systems, internet-based communications services, newspapers, magazines, or fundraising organizations that redistribute money to multiple cultural organizations.

The city may not use the funding to replace or supplant existing funding ([RCW 36.160.050](#)). The city must affirm that any funding it usually and customarily provides to cultural organizations will not be replaced or materially diminished. If the organization receiving funds is a state-related cultural organization, the funds received may not replace or materially diminish state funding.

Ballot Measure Requirements

The city must adopt an ordinance to impose the levy and the ballot proposition must set the total levy amount and estimated levy rate to be collected in the first year of the levy. The levy amount for the first year may not exceed an amount equal to:

The total taxable retail sales and taxable uses in the county or the city levying the property tax for the most recent calendar year as reported by the department multiplied by one-tenth of one percent. Any county or city levying the property tax in this section must calculate the total dollar amount to be collected using the most recent calendar year publicly available data of taxable retail sales published on the department's web site. ([RCW 84.52.821\(1\)](#))

The property tax may be submitted at any special, primary,¹⁸ or general election and must be approved by a simple majority of voters. There are no validation/minimum voter turnout requirements. According to MRSC's [Local Ballot Measure Database](#), as of 2019 no cities, towns, or counties have attempted to use this property tax option.

1% Annual Levy Limit

The cultural access program levy is subject to the 1% annual "levy lid" (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)). If your city's assessed value is increasing more than 1% per year, excluding new construction and "add-ons," your levy rate will begin to decrease as a result. However, since cultural access program levies are temporary and must be re-submitted to voters after no more than seven years anyways, the 1% levy lid is probably not a big concern. Any adjustments to produce more revenue can be made in the reauthorization ballot measure.

Prorationing

The cultural access program levy is subject to both the \$5.90 local limit and \$10 constitutional limit and may be subject to prorationing if either limit is exceeded (see [Maximum Aggregate Levy Rates](#)). In particular, if the \$5.90 limitation is exceeded, the cultural access levy will be the very first levy to be reduced or eliminated (unless the county has a road levy shift in place, in which case the road levy shift must be reduced or eliminated first).

Sales Tax Alternative

Any city, town, or county may also impose a retail sales tax under [RCW 82.14.525](#) for cultural access programs (see [Cultural Access Program Sales Tax](#)). From a revenue standpoint, the property tax and sales tax options are roughly equivalent: the amount of revenue generated by the property tax may not exceed 0.1% of the retail sales in the city for the most recent calendar year, both options require a simple majority vote, and both are capped at seven years but may be renewed with voter approval.

¹⁸ [RCW 84.52.821](#) states that the tax must be submitted at "a special or general election," which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four "special elections" each year, including the primary election. So for these purposes, "special election" includes the primary election.

Deciding whether to impose the sales tax or the property tax option is a policy decision for the county to make, although it is worth noting that the property tax levy is subject to possible prorationing while the sales tax option is not. However, counties (and, by extension, cities) may not implement the property tax and the sales tax options concurrently ([RCW 36.160.080](#)).

EMERGENCY MEDICAL SERVICES (EMS) LEVY

Quick Summary

- Property tax – additional levy up to \$0.50 per \$1,000 assessed valuation.
- Revenues are restricted to the provision of emergency medical care or services.
- May be imposed for 6 years, 10 years, or permanently.
- Requires voter approval.
- Subject to \$10 constitutional limit but not \$5.90 limit.

RCW: 84.52.069

Any city or town – as well as any county, emergency medical service district, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district – may impose a property tax levy up to \$0.50 per \$1,000 of assessed valuation to provide for emergency medical care or emergency medical services (EMS, [RCW 84.52.069](#)). The levy may be imposed for 6 years, 10 years, or permanently, and it requires voter approval.

However, no city may impose an EMS levy if it is located within another taxing district that imposes an EMS levy. The only exception is for countywide EMS levies: If the county has imposed an EMS levy less than the \$0.50 statutory maximum, any taxing district within the county may impose a levy so long as the combined levies do not exceed \$0.50. For instance, if the county imposes a \$0.30 EMS levy, a city within the county may impose an EMS levy up to \$0.20 per \$1,000 AV.¹⁹

Use of Revenues

EMS levies must be used for emergency medical care or emergency medical services, including related personnel costs, equipment, supplies, vehicles and structures associated with emergency medical care and services.

Ballot Measure Requirements

An EMS levy may be presented to the voters at any special, primary,²⁰ or general election. The ballot measure must conform to [RCW 29A.36.210](#), including specifying whether the levy will be imposed for 6 years, 10 years, or permanently.

No city or other taxing district may place an EMS levy on the ballot at the same election as a countywide EMS levy. If the county imposes a temporary 6-year or 10-year EMS levy below the maximum \$0.50 rate, any subsequent temporary EMS levy approved by a taxing district within the county must expire at the same time as the countywide levy.

¹⁹ There are also two specific exceptions for Bothell (urban EMS district under [RCW 35.21.762](#)) and Milton ([RCW 84.52.069\(10\)](#)) to address the fact that they are both located partially within King County (which has a countywide EMS levy) and partially within another county that does not impose an EMS levy (Snohomish County and Pierce County, respectively).

²⁰ [RCW 84.52.069](#) states that the levy must be submitted at “a special or general election,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

The ballot language and approval requirements depend on several factors:

For 6-year or 10-year EMS levies: The initial imposition of a 6-year or 10-year EMS levy requires a 60% supermajority vote, subject to minimum voter turnout requirements (see [Validation/Voter Turnout Requirements](#)). For the “subsequent renewal” of a previously imposed EMS levy, at the same levy rate that voters already approved (or less), a simple majority vote is all that is required, with no validation.²¹

For a permanent EMS levy: A permanent EMS levy requires a 60% supermajority vote, subject to minimum voter turnout requirements (see [Validation/Voter Turnout Requirements](#)). In addition, if a city imposes a permanent EMS levy, it must account separately for the receipt and expenditure of the EMS levy monies ([RCW 84.59.069\(3\)](#)) and provide a statement of accounting that is updated at least every two years and made available to the public upon request at no charge.

For a permanent EMS levy, you must also provide for a referendum procedure to apply to the ordinance imposing the tax ([RCW 84.52.069\(4\)](#)), regardless of whether your city has otherwise adopted powers of initiative and referendum. The referendum procedure must specify that a referendum petition may be filed at “any time.” The procedures and requirements of this referendum provision are unique to the EMS levy and supersede the procedures provided under all other statutory or charter provisions for initiative or referendum. For examples of referendum language, see MRSC’s [EMS Levies webpage](#). However, EMS levies tend to be pretty popular, and we are not aware of any EMS levy referendums that have been attempted recently.

According to MRSC’s [Local Ballot Measure Database](#), voters have approved the vast majority (approximately 90%) of city EMS levies in recent years.



If your initial ballot proposition established an EMS levy rate less than \$0.50 per \$1,000 assessed value, any future increases above the initial levy rate approved by voters would be considered the initial imposition of a new levy, requiring 60% supermajority approval with validation. For instance, if a city imposes a permanent EMS levy with an initial rate of \$0.30 per \$1,000 AV and later decides to increase the levy to \$0.50, it would have to submit a new \$0.50 permanent EMS levy to voters. Likewise, if a city imposed a 10-year EMS levy at an initial rate of \$0.30 and then, upon its expiration 10 years later, submits another 10-year levy for \$0.50, the \$0.50 levy is considered the initial imposition of a new levy, rather than the continuation of a previously approved levy.

²¹ Previously, a simple majority vote was only allowed for an “uninterrupted continuation,” but that language changed with 2018 legislation.

Comparison of 6-Year, 10-Year, and Permanent EMS Levies

	6-Year or 10-Year Levy	Permanent Levy
Requirements for initial imposition:	60% supermajority with validation	60% supermajority with validation
Requirements for subsequent renewal:	Simple majority; no validation	N/A
Separate accounting required?	No	Yes
Referendum procedure required?	No	Yes

1% Annual Levy Lid Limit

The EMS levy is subject to the 1% annual “levy lid” (see [The 1% Annual Levy Lid Limit \(“101% Limit”\)](#)). If your city’s assessed value is increasing more than 1% per year, excluding new construction and “add-ons,” your EMS levy rate will begin to decrease as a result. However, if you are levying less than the maximum \$0.50 rate, your city can potentially increase its EMS levy above the 1% annual levy lid through non-voted banked capacity (if available – see [Banked Capacity](#)) or a voted levy lid lift (see [Levy Lid Lifts](#)).

Prorationing

EMS levies are not subject to the \$5.90 local limit but are subject to the \$10 constitutional limit (see [Maximum Aggregate Levy Rates](#)). If the \$10 constitutional limit is exceeded, the EMS levy could potentially be reduced through prorationing, although this is unlikely as there are many other local levies that would be reduced first.

EXCESS LEVIES (OPERATIONS & MAINTENANCE)

Quick Summary

- Property tax – additional levy with no specific levy rate cap.
- Revenues may be used for any lawful governmental purpose, but must be spent in accordance with the purpose(s) specified in the ballot measure.
- Requires voter approval.

RCW: [84.52.052](#), [84.52.054](#)

“Excess” or “special” levies, frequently referred to as “maintenance and operations” or “O&M” levies, are one-year levies²² that impose property taxes over and above the \$5.90 and \$10 constitutional property tax limits. Excess levies are authorized by [RCW 84.52.052](#) and [RCW 84.52.054](#), as well as article VII, section 2(a) of the state constitution. Any city may impose a one-year excess levy with voter approval. There is no restriction on the levy rate or levy amount for an excess O&M levy.

Use of Revenues

Excess O&M levies may be used for any lawful governmental purpose; however, the revenues must be spent in accordance with the purpose(s) specified in the ballot measure.

Because each levy is only for one year, excess O&M levies are often best suited for temporary purposes, such as a short-term project, a one-time expense or purchase, or bridging a temporary revenue shortfall or similar funding emergency. They have also been used effectively to fund gaps created when the timing of an annexation, formation of a special purpose district (such as a metropolitan park district or a regional fire authority), or other boundary change does not match with the assessors’ schedules for adjusting boundaries, leaving a one-year delay before the new property taxes can be levied and collected within the new annexation area or newly formed special purpose district.

Excess O&M levies are generally not ideal for recurring expenses or critical governmental services such as public safety due to the 60% supermajority requirement (see next page) and the fact that the city must go before the voters every single year. If you are relying on excess levies and more than 40% of your voters say “no” one year, your city could face significant fiscal challenges.

However, there are a number of smaller, primarily rural cities and towns with limited revenue options that use excess O&M levies to fund basic general fund services such as public safety and transportation.

If your city is levying its statutory maximum rates and your revenue sources are still not sufficient to fund your ongoing maintenance and operations costs, salaries, etc., it may be prudent to consider other, more permanent revenue sources instead of annual excess O&M levies. However, for some cities with supportive voters, excess levies may still be an option for recurring expenses.

²² For cities, counties, and almost all other taxing districts, excess levies may only be imposed for one year at a time. However, school districts and fire protection districts have separate statutes allowing for multi-year excess levies.

Ballot Measure Requirements

An excess O&M levy may be submitted at any special, primary,²³ or general election and requires 60% supermajority approval, subject to minimum voter turnout requirements (see [Validation/Voter Turnout Requirements](#)).

According to MRSC's [Local Ballot Measure Database](#), about 80% of excess O&M levies submitted by cities have passed in recent years. However, these results are significantly skewed by the small number of cities that are responsible for the vast majority of these levies, as well as the historical custom of the voters in those cities and towns.

1% Annual Levy Limit

Because excess levies may only be imposed for one year at a time, the 1% annual levy lid limit (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)) does not apply. To impose an excess levy in subsequent years, the city would have to submit a new excess levy to voters every year.

Prorationing

Excess O&M levies are not subject to the \$5.90 or \$10 limits (see [Maximum Aggregate Levy Rates](#)), so they are not subject to prorationing and will not be affected if either limit is exceeded.

²³ [RCW 84.52.052](#) states that the levy must be submitted at "a special or general election," which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four "special elections" each year, including the primary election. So for these purposes, "special election" includes the primary election.

G.O. BOND EXCESS LEVIES (CAPITAL PURPOSES)

Quick Summary

- Property tax – excess levy to repay unlimited tax general obligation (G.O.) bonds.
- Revenues are restricted to capital purposes.
- Requires voter approval.

RCW: 84.52.056

Any city, with voter approval, may issue unlimited tax general obligation (G.O.) bonds – also known as U.T.G.O. bonds – for capital purposes (see [RCW 84.52.056](#) and article VII, section 2(b) of the state constitution). Once the bond has been approved and issued, it is repaid through annual excess levies for the duration of the bond.

G.O. bond excess levies provide a stable revenue stream to repay debt and are automatically sized to pay the principal and interest on the bonds due each year (unlike other revenue sources such as levy lid lifts or sales taxes). As soon as the debt has been repaid, the excess levies cease.

If you are considering issuing G.O. bonds for a capital project, it is extremely important to consult your city's bond counsel early in the planning process.

Use of Revenues

U.T.G.O. bonds may only be used for capital purposes, which does *not* include the replacement of equipment.

Ballot Measure Requirements

A U.T.G.O. bond may be submitted at any special, primary, or general election and requires 60% supermajority approval, subject to minimum voter turnout requirements (see [Validation/Voter Turnout Requirements](#)). Such an election may not be held more often than twice per calendar year.

The ballot measure should typically be drafted by your city's bond counsel, since it has peculiar requirements and must authorize both the issuance of the bonds *and* the excess property tax levies.

1% Annual Levy Limit

G.O. bond excess levies are not subject to the 1% annual levy lid limit. The levy amount for each year is calculated according to the length of the obligation and the associated amortization schedule prepared at the time of the bond sale. The annual levy amounts are “right-sized” so that they will repay the exact amount of the debt, including both the principal and the interest.

Prorationing

G.O. bond excess levies are not subject to the \$5.90 or \$10 limits (see [Maximum Aggregate Levy Rates](#)), so they are not subject to prorationing and will not be affected if either limit is exceeded.

REFUNDS AND REFUND LEVIES

Quick Summary

- Taxing districts may increase one or more of their levies to pay for any property tax administrative refunds or refunds due to judgments.
- Refund levies are not subject to the 1% annual levy lid, but may not exceed the district's normal statutory maximum levy rates.
- Does not require voter approval.

RCW: [84.69.020](#) and [chapter 84.68 RCW](#)

In some situations, the city may have to refund property taxes paid by individual property owners or cancel property taxes that were due but not yet paid. There are two types of refunds: administrative refunds ([RCW 84.69.020](#)) and refunds of taxes recoverable by judgment ([chapter 84.68 RCW](#)).

The city may impose additional “refund levies” to pay for these refunds. In effect, this allows the taxing district to collect extra revenue to offset the financial loss from the refunds so that it does not suffer any negative budgetary impacts.

Administrative Refunds

Administrative refunds are made on the order of the county treasurer when taxes were paid more than once or as the result of an error in description, a clerical error in extending the tax rolls, or other errors and mistakes as defined within [RCW 84.69.020](#).

A city may choose whether an administrative refund should be included in the following year's levy, thereby reducing the levy amount received by the amount of the administrative refund, or to levy for the refund. Should the city choose to include the refund in the following year's levy, it must contact the county treasurer to obtain the refund amounts and additionally notify the county assessor of the district's intent. It will be important for the city to work closely with the county on the options available for administrative refunds.

Refunds Recoverable by Judgment

All property taxes placed on the tax roll must be paid; however, the owner of the property being taxed may file a written protest laying out the grounds for either an unlawful or excessive levy amount ([RCW 84.68.020](#)) and bring the issue before the superior or federal court. If the court rules in favor of the property owner, the city must refund the taxes, plus interest, due to the judgment ([RCW 84.68.030](#)).

[RCW 84.68.030](#) and [RCW 84.68.040](#) provide for the creation and maintenance of a fund within the county treasury known as the “Refund Fund.” The fund is to be used to refund to taxpayers the amount of all taxes recoverable by judgments rendered against the taxing district within the preceding 12 months including interest and costs allowed by judgment.

Every year the county shall make a levy for judgment refunds ([RCW 84.68.040](#)) and these levies shall take precedence over all other tax levies for taxing districts that are part of the judgment.

1% Annual Levy Lid Limit

Refund levies are basically a one-year levy and therefore are not subject to the annual 1% levy lid (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)).

Prorationing

Refund levies are subject to the \$5.90 and \$10 limitations (see [Maximum Aggregate Levy Rates](#)), as well as the statutory maximum rate for each respective levy. For instance, if a city's maximum general fund levy rate is \$3.10 per \$1,000 AV, the general fund levy rate *including* any refund levies cannot exceed \$3.10.

For examples and further details, refer to the DOR [Property Tax Levy Manual](#).

THE 1% ANNUAL LEVY LID LIMIT (“101% LIMIT”)

The “levy lid” – also known as the “1% increase limit” or “101% limit” – restricts how much your city’s levy amount (the total property tax revenue received) can grow each year and was enacted due to concerns about property taxes levies rising faster than inflation.

The levy lid was originally established by the state legislature in 1971, and at that time it essentially stated that a taxing district could not increase its total levy amount more than 6% per year, plus an additional amount for any new construction or improvements. For jurisdictions over 10,000 population, that was further restricted by voters in 1997 with the approval of Referendum 47, which limited the increase to 6% or the rate of inflation, whichever was less, unless the legislative body made a finding of substantial need with a supermajority vote.

Then in 2001, voters passed Initiative 747, which lowered the 6% limit to 1%. In 2007, the initiative was ruled unconstitutional by the state Supreme Court, which stated that the voters had been misled. However, the governor quickly convened a special session of the legislature, which reinstated the 1% limit as approved by voters and established the limitation we know now ([RCW 84.55.010](#) and [WAC 458-19-020](#)).

The 1% annual levy lid applies to all city levies except one-year excess O&M levies, excess levies for the repayment of general obligation bonds, and refund levies.

Here’s how it works:

- **For cities with a population of less than 10,000:** You may not increase your levy amount – the total dollar value of property taxes you receive – more than 1% each year, plus an additional levy amount generated by new construction and “add-ons.”
- **For cities with a population of 10,000 or more:** You may not increase your levy amount – the total dollar value of property taxes you receive – more than 1% or the rate of inflation each year, whichever is lower, plus an additional levy amount generated by new construction and “add-ons.” The rate of inflation is measured by the implicit price deflator (IPD). However, if the IPD falls below 1% you may be able to increase your levy amount the full 1% through a finding of “substantial need” (see [The Implicit Price Deflator and “Substantial Need”](#)).

The city may only exceed these limits through the use of non-voted banked capacity (if available – see [Banked Capacity](#)) or, if the city does not have banked capacity available, a levy lid lift approved by voters (see [Levy Lid Lifts](#)).

The “add-ons,” established primarily in [RCW 84.55.010](#), refer to increases in assessed valuation from the previous year due to:

- New construction and property improvements,
- New annexations ([RCW 84.55.030](#) and [WAC 458-19-035](#))
- Changes in state-assessed utility valuations, and
- Construction of certain renewable energy electricity-generating facilities.

The change in assessed valuation due to these add-ons is multiplied by the prior year’s levy rate, and the resulting amount is then added to the 1% annual increase to generate the maximum allowable levy for the next year. In practice, this means that a city’s total levy amount will typically increase a bit more than 1% each year. See the example on the next page for a simplified example of how the 1% annual limit works, including add-ons.

Example of Hypothetical 1% Levy Lid Limit for City Regular Levy (General Fund)

(assumes city takes maximum possible increase and does not exceed its statutory maximum levy rates)

Year	Levy amount	x 1.01 =	1% increase	+	Increase due to add-ons	=	Next Year's Maximum Allowable Levy
1	1,000,000	x 1.01 =	1,010,000	+	10,000	=	1,020,000
↓							
2	1,020,000	x 1.01 =	1,030,200	+	7,500	=	1,037,700
↓							
3	1,037,700	x 1.01 =	1,048,077	+	12,500	=	1,060,577
↓							
4	1,060,577	x 1.01 =	1,071,183	+	15,000	=	1,086,183
↓							
etc...							

In this example, the city increased its prior year's levy the full 1% every year as allowed by statute, but the total levy amount increased roughly 2-3% per year due to the additional amount gained from add-ons. (The example does not include refund levies, if any, which are added on to the city's levy but are not part of the annual 1% levy limit calculations. See [Refunds and Refund Levies](#).)

Your city is not required to increase its levy the full 1% each year, however. If your city decides to levy less than the maximum 1% increase, you can preserve your future levying capacity through the concept of banked capacity (see [Banked Capacity](#)).

Under Washington's budget-based property tax system (see [What is a Budget-Based Property Tax?](#)), the 1% levy limit can cause a city's levy rate (per \$1,000 assessed value) to fluctuate over time. The levy amount each year is divided by the assessed value to calculate the levy rate that property owners must pay. If your assessed valuation is increasing rapidly enough, the 1% limit can result in steady decreases in your levy rate.

For instance, we have added some hypothetical assessed values to the levy amounts from the previous table:

Example of 1% Levy Limit Effect on City Regular (General Fund) Levy Rates

Year	Levy amount	÷	Assessed value	=	Levy rate per \$1,000 AV
1	1,000,000		400,000,000		2.50
2	1,020,000		415,000,000		2.46
3	1,037,700		435,000,000		2.39
4	1,060,577		440,000,000		2.41

In Years 2 and 3, the city’s total levy amount (including the increase due to add-ons) increased roughly 2-3% per year, but the city’s total assessed value increased 4-5% per year. Because the assessed value grew faster than the levy amount, the levy rate decreased each year. But in Year 4, the levy amount grew about 3% while the assessed value increased less than 2%. Since the levy amount increased faster than the assessed valuation, the levy rate increased.

The interaction of the assessed value (AV), levy amount (total dollar amount of property tax revenues collected), and levy rate (per \$1,000 AV) can be broadly summarized like this:

If assessed value % increase >	levy amount % increase:	levy rate ↓
If assessed value % increase =	levy amount % increase:	levy rate unchanged
If assessed value % increase <	levy amount % increase:	levy rate ↑ (not to exceed max. levy rate)

It’s important to note that while assessed values can fluctuate, the city may never exceed its normal statutory maximum levy rates. For instance, if your city has a statutory maximum levy rate of \$3.10 for its general fund levy, and increasing your general fund levy the full 1% plus add-ons would cause you to exceed that maximum rate, you would not be able to levy the full 1% increase.

The 1% levy lid obviously restricts revenue growth, which creates challenges when expenses are increasing faster than 1% per year due to inflation, criminal justice costs, labor and benefit costs, and other factors.

While the 1% levy lid places a limitation on the city’s *total* levy amount that may be collected, it does not limit the property taxes due from individual property owners. Because the assessed valuations of different properties fluctuate at different rates depending upon market conditions, some property owners may see their property taxes go up much more than 1%, while other property owners may simultaneously see their property tax bills decrease.



Practice Tip: To determine your city’s maximum allowable levy: Talk to your county assessor and refer to DOR’s [Property Tax Forms](#) webpage, which contains a Highest Lawful Levy Calculation spreadsheet (64 0007).

The Implicit Price Deflator and “Substantial Need”



The implicit price deflator (IPD) only impacts cities with a population of 10,000 or more. If your city or town has a population of less than 10,000, this section does not apply to you.

As noted earlier, the 1% annual levy lid means that cities with a population of 10,000 or more may not increase their levy amounts – excluding the tax increase resulting from new construction and “add-ons” – more than 1% or the rate of inflation, whichever is lower.

The definition of “inflation” for setting a property tax levy ([RCW 84.55.005](#)) is:

“Inflation” means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce by September 25th of the year before the taxes are payable.

The state Department of Revenue (DOR) calculates the IPD using the most recent quarterly numbers reported by the federal Bureau of Economic Analysis (BEA).

Every month BEA publishes an estimate of the quarterly IPD numbers. These quarterly numbers are seasonally adjusted each year in July, and these seasonal numbers form the basis for the prior year IPD number that is used by DOR to calculate inflation. The most recent publication available on September 25 is typically the August publication.

For the most recent IPD information, refer to our [Implicit Price Deflator](#) webpage. We will also inform you through our blog posts or e-newsletters each year when the IPD numbers are officially calculated in September.

If the annual IPD rate is above 1% on September 25: No action is needed. Because the inflation rate exceeded 1%, your city may increase its levy amount the full 1% for next year (plus new revenue generated by “add-ons”).

If the annual IPD rate is below 1% on September 25: Your city may not increase next year’s levy amount above the IPD rate without a finding of “substantial need” (see below). For instance, if the inflation rate is 0.5%, you may not increase next year’s levy amount more than 0.5% (plus new revenue generated by “add-ons”). If deflation occurs and the IPD is negative – which is rare but can happen in a recession – you will actually have to *decrease* your levy amount.²⁴

If the IPD falls below 1%, cities of 10,000 or more may still increase their levy amounts the full 1% if they adopt a resolution or ordinance of “substantial need” ([RCW 84.55.0101](#)). The statute does not define “substantial need,” so each city council must interpret “substantial need” according to its needs and requirements. The city must document its evidence support those needs in written findings that are included within the city ordinance/ resolution. For instance, one example of a substantial need finding would be a documented increase in the costs of services in excess of current inflation factors.

²⁴ For information on negative inflation, see DOR’s 2009 special notice entitled [Determining the Limit Factor for Increases in Property Tax Levies](#).

For local governments with five or more members of the legislative body – which is to say, all cities and towns – the substantial need finding requires a “majority plus one” supermajority for passage. For instance, if your city council has seven members, approval requires a vote of at least 5-2 in favor.

For examples of resolutions and ordinance of substantial need, see our [Implicit Price Deflator](#) webpage.

If the IPD is less than 1% and your city is not levying the maximum allowable amount – for instance, the IPD is 0.5% and your city is not increasing its levy at all – but you want to preserve your future levy capacity, you can adopt a resolution or ordinance of “future substantial need” using the same process described above and subject to the same supermajority requirements to “bank” the capacity (see [Banked Capacity](#)).

BANKED CAPACITY

Quick Summary

- Allows cities to exceed 1% annual levy limit for any of their levies.
- May be restricted depending upon the type of levy being imposed.
- Only available to cities that are levying less than their maximum allowable levy amount and less than their maximum statutory levy rates.
- Does not require voter approval.

RCW: [84.55.092](#)

One way that some cities can exceed the 1% levy lid is through the use of “banked capacity.” This mechanism is available to cities that have levied less than the maximum amount allowed over the years.

Prior to 1986, local governments felt compelled to raise their property tax levies by the maximum amount each year (6% at that time), even if they did not need the revenue, because if they did not levy the maximum increase they would lose that extra levy capacity in the future. It created a “use it or lose it” approach to levy setting.

But now, any city may take less than the maximum allowed 1% levy increase in any given year and preserve (“bank”) the remaining dollar amount to use at some future date ([RCW 84.55.092](#)). With this mechanism, the city’s “maximum allowable levy” calculated under state statute increases the full 1% each year, plus add-ons, as long as it has adopted the required levy ordinance requesting some percentage less than the maximum allowed.

Essentially, a city’s banked capacity is the difference between its maximum allowable levy and its actual levy. If the city is levying its maximum allowable levy, it has no banked capacity available. If a city is levying less than its maximum allowable levy, it has banked capacity available.

In Example #1 on the next page (which is simplified and does not include add-ons), the city does not increase its levy in years 1-5. Each year, the city “banks” the difference between its maximum allowable levy and its actual levy amount. For Year 6, the city faces a revenue shortfall and needs to increase its levy amount, so it uses its banked capacity to increase the levy amount back to the maximum allowable levy, resulting in a one-time levy increase of more than 6%.

Banked Capacity Example #1

Year	Maximum allowable levy <i>1% increase each year*</i>	Actual levy amount	Levy increase	Future banked capacity available: <i>maximum allowable levy minus actual levy</i>
0 (baseline)	1,000,000	1,000,000	N/A	0
1	1,010,000	1,000,000	0%	10,000
2	1,020,100	1,000,000	0%	20,100
3	1,030,301	1,000,000	0%	30,301
4	1,040,604	1,000,000	0%	40,604
5	1,051,010	1,000,000	0%	51,010
6	1,061,520	1,061,520	6.2%	0

* For simplicity, does not include “add-ons”

The same principles apply if the city decides to lower its levy amount, or if it increases its levy but by less than the maximum allowable amount. In Example #2, the city has experienced a revenue windfall in Year 0 and has more money than it needs for the Year 1 budget. Rather than putting the excess funds in a contingency fund or a “rainy day” fund, the city decides to give the taxpayers a break by lowering the property tax.

In Year 1, it lowers the tax by \$50,000, resulting in \$60,000 of banked capacity. In Years 2-5, the city gradually increases the levy amount by \$5,000 per year, or roughly 0.5%. Since this is still less than the allowable 1% increase, the city’s banked capacity continues to grow. For Year 6, the city faces a revenue shortfall and decides to use most of its banked capacity, resulting in a one-time levy increase of over 7%. However, the city did not use all of its banked capacity, so it will still have some banked capacity available in future years.

Banked Capacity Example #2

Year	Maximum allowable levy <i>1% increase each year*</i>	Actual levy amount	Levy increase	Future banked capacity available: <i>maximum allowable levy minus actual levy</i>
0 (baseline)	1,000,000	1,000,000	N/A	0
1	1,010,000	950,000	-5.0%	60,000
2	1,020,100	955,000	0.5%	65,100
3	1,030,301	960,000	0.5%	70,301
4	1,040,604	965,000	0.5%	75,604
5	1,051,010	970,000	0.5%	81,010
6	1,061,520	1,040,000	7.2%	21,520

* For simplicity, does not include “add-ons”

There are no special procedures a city must follow or resolutions it must adopt to bank capacity – you can simply bank capacity by following the normal levy-setting process (see [Annual Levy Certification Process](#)). When you certify the property tax levy to the county assessor (no later than November 30 under [RCW 84.52.070](#)), you simply state how much you are increasing your levy, both in dollars and in percent. If you are not increasing your levy at all, you would state that you are increasing your levy by \$0, which is a 0% increase. If the percent increase is less than 1%, you automatically bank the excess capacity.

However, if you miss the November 30 deadline or fail to adopt an annual levy ordinance, you cannot increase your levy above the current level, and you cannot bank the capacity for the next year.

To find out whether your city has banked capacity available – and how much – contact your county assessor. If you have banked capacity available, you can use it by simply including some or all of your banked capacity in your annual levy certification ordinance due to the assessor by November 30.



Practice Tip: As noted earlier, cities with a population of 10,000 or more may only increase the maximum allowable levy by 1% or the rate of inflation as measured by the implicit price deflator, whichever is less. This applies to banked capacity, too, since your banked capacity is the difference between your maximum allowable levy and your actual levy.

For instance, if the IPD increases only 0.5% and your city does not increase its levy at all for next year, you may only bank the extra 0.5% capacity next year. However, you can still bank the full 1% capacity if you adopt a resolution or ordinance of “future substantial need,” just as you would a normal resolution or ordinance of “substantial need” (see [The Implicit Price Deflator and “Substantial Need”](#)).

LEVY LID LIFTS

Quick Summary

- Allows cities to exceed the 1% annual levy lid for any of their levies.
- Two basic options:
 - “Single-year” lid lifts allow you to exceed the 1% annual lid for one year only.
 - “Multi-year” lid lifts allow you to exceed the 1% annual lid for up to six years.
- Cannot use a levy lid lift if city is levying its statutory maximum rate.
- Must use all of your banked capacity before seeking a levy lid lift.
- Revenues are either unrestricted or restricted depending upon the levy lid being increased.
- Requires voter approval.

RCW: [84.55.050](#)

If your city does not have banked capacity available, the only way to increase your levy amount more than 1% is through a voter-approved “levy lid lift.” (See [RCW 84.55.050](#) and [WAC 458-19-045](#), which provides a better understanding of the process than the statute.) According to the Department of Revenue, if you *do* have banked capacity available, you must use all of your banked capacity before seeking a levy lid lift. You cannot “save” banked capacity by doing a levy lid lift.

A levy lid lift is not a separate property tax, but rather a way of increasing an existing property tax, such as your general fund levy or EMS levy, above the 1% increase limit. Any city levying a tax rate below its statutory maximum rate may ask the voters to “lift” the levy lid by increasing the tax rate to some amount less than or equal to its statutory maximum rate. If your city is already levying its maximum rate, you cannot use a levy lid lift.

Your city would need to do a separate levy lid lift for each of its respective levies. For instance, you could submit one ballot measure for your general fund levy, but you would have to submit a separate ballot measure for your EMS levy.

Beginning in 2018, cities can exempt senior citizens, disabled veterans, and other people with disabilities (as defined in [RCW 84.36.381](#)) from the tax increase resulting from a levy lid lift if desired. This exemption is optional, and if your jurisdiction is planning a levy lid lift and you want to exempt these individuals, you must state the exemption in the ballot measure placed before the voters. If you choose this option, this will result in two separate assessed valuations for your levy – one that applies to the levy amount below the lid lift, and a somewhat smaller assessed valuation that applies to the levy lid lift portion only.

Levy lid lifts can be quite confusing. Cities have two main options: “single-year” and “multi-year” lid lifts. However, these names can be confusing too, since “single-year” lid lifts typically last for multiple years and can be made permanent.

A good way to think of the difference between “single-year” and “multi-year” lid lifts is: How many years can your total levy increase by more than 1 percent? With a single-year lid lift, you can exceed the 1% annual limit for one year only, and then future increases are limited to 1% (or inflation) for the remainder of the levy. With a multi-year lid lift, you can exceed the 1% annual limit for up to 6 consecutive years.

Which Option is Better?

The answer, of course, is “it depends.” There are a number of key differences between single-year and multi-year lid lifts. A brief summary is below, with more details on the following pages.

Comparison of Levy Lid Lift Options

	“Single-Year” Option	“Multi-Year” Option
Number of years you can exceed the 1% annual levy limit	1	Up to 6
Temporary option	After Year 1, levy amount increases up to 1% annually for specified number of years. After measure expires, levy reverts as if lid lift never occurred.	Lid lift lasts up to 6 years, with annual limit factor specified by city. After measure expires, levy reverts as if lid lift never occurred.
Permanent option	Year 1 levy is used to calculate all future 1% levy increases	Levy amount in final year is used to calculate all future 1% levy increases
May be used for	Any lawful governmental purpose	Any limited purpose stated in the ballot measure
Supplanting restrictions?	None	Cities within King County may not supplant funds
Election date	Any special, primary, or general election	Primary or general election only
Voter approval required	Simple majority	Simple majority

Setting a specific time period (a temporary lid lift) may make the ballot measure more attractive to the voters. But, making it permanent means you can use the funds for ongoing operating expenditures without having to be concerned that you will have to go back to the voters for another lid lift.

When selecting the right levy lid lift option for your city, here are a few key factors to consider:

- How much money you need to raise;
- What you need the revenue for, and for how long (for instance, continued operating costs versus a capital project that will only last a few years);
- How quickly your costs, and property values, are increasing;
- Your desired election date (special, primary, or general); and
- How you think voters will respond to the different alternatives (for instance, a permanent versus temporary tax).

Using Levy Lid Lifts to Repay Debt

Both single-year and multi-year levy lid lifts can be used to repay debt. However, if the levy lid lift is used to repay debt, it may not exceed nine years.



Practice Tip: Many cities consider whether they can use a levy lid lift to circumvent the supermajority voter approval and minimum turnout requirements of a voted general obligation (G.O.) bond. However, if you can get the required 60% approval from voters, a voted G.O. bond repaid by an excess levy (see [G.O. Bond Excess Levies \(Capital Purposes\)](#)), provides several advantages over a levy lid lift:

- Because the excess levy is automatically sized to be sufficient to pay the principal and interest on the bonds due in each year, it is a more stable revenue stream. The amount of revenue generated by a levy lid lift, by comparison, is subject to fluctuation based on the interplay of assessed valuation and levy rate limits or the 1% levy lid (see [The 1% Annual Levy Lid Limit \("101% Limit"\)](#)).
- Because an excess levy is a dedicated revenue stream that cannot be used for other purposes, it will likely be seen as more secure by the bond market and may result in a better rating, and thus lower interest rates for your city to pay.
- The excess levy will be collected as long as necessary to repay the bonds, which is often 20 years or more. If you plan to use a levy lid lift to repay bonds, the levy lid lift cannot last for more than nine years.

Single-Year Levy Lid Lifts

Quick Summary

- Allows cities to exceed the 1% annual levy lid for any of their levies for one year only.
 - If lid lift is temporary, all subsequent levies are limited to a 1% annual increase until the measure expires, at which point the maximum allowable levy reverts to what it would have been without the lid lift.
 - If lid lift is permanent, all subsequent levies are limited to a 1% annual increase and the levy increase never expires or reverts.
- Cannot use a levy lid lift if city is levying its statutory maximum rate.
- Must use all of your banked capacity before seeking a levy lid lift.
- Revenues are unrestricted and may be used for any lawful governmental purpose, but must be spent in accordance with the purpose(s) specified in the ballot measure (if any).
- Requires voter approval.

RCW: 84.55.050(1)

The single-year levy lid lift is the original version, created in 2001 by Initiative 747 (which lowered the annual levy limit from 6% to 1%). Some people refer to it with a variety of other names, such as “one-bump,” “one-year,” “basic,” “original flavor,” or “plain vanilla.”

The single-year lid lift allows your city to increase its maximum levy by more than 1% for one year only. The resulting amount is then used as a base to calculate all subsequent 1% levy limitations for the duration of the levy.

Single-year levy lid lifts can be temporary or permanent. With a temporary single-year lid lift, the city sets an expiration date for the levy. The temporary lid lift can last for any number of years, but if used to repay debt service it may not exceed nine years.²⁵ The levy lid bumps up more than 1% in the first year, and then that amount is used to calculate all subsequent 1% levy limitations until the measure expires. When the lid lift expires, the levy lid reverts to what it *would have been* if the levy lid lift never existed and the city had increased its levy by the maximum allowable amount each year in the meantime.

With a permanent single-year levy lid lift, the levy lid bumps up more than 1% in the first year, and then that amount is used to calculate all future 1% levy limitations. The measure never expires and the levy lid never reverts. However, future annual increases may not exceed 1% without going to the voters for another lid lift.

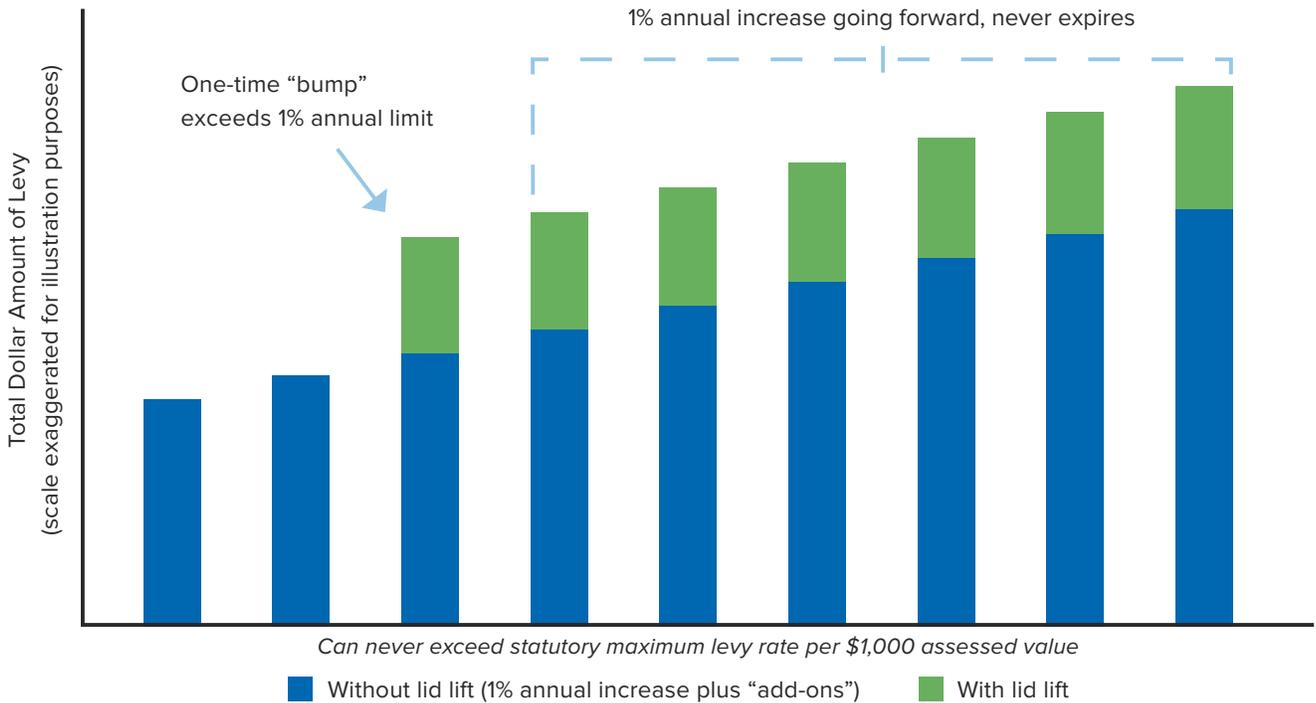
See the examples on the next page.

²⁵ Except Thurston County, which may use a levy lid lift up to 25 years for debt service. This exception only applies to the county itself and not to any cities within Thurston County.

SINGLE-YEAR TEMPORARY LEVY LID LIFT



SINGLE-YEAR PERMANENT LEVY LID LIFT



Use of Revenues

Single-year lid lifts may be used for any of the city's levies, including the general fund levy, and there are no restrictions on supplanting funds. For instance, you could say a general fund levy lid lift would be for public health programs or for additional money for general government purposes, or you could say nothing at all. In the latter case, by default, it would be for general government purposes. Stating a particular purpose, however, may improve your chances of getting the voters to approve it. If you do state a purpose, the revenues must be spent in accordance with that purpose.

If the single-year levy lid lift is used for debt service, it may not exceed 9 years. However, note that the amount of revenue generated by a levy lid lift is not guaranteed to provide the precise amount of revenue needed to repay the debt, since the revenues generated by the levy lid lift depend upon assessed valuation, levy rate limitations, and the 1% annual levy lid.

Ballot Measure Requirements

Single-year lid lifts may be submitted at any special, primary, or general election and require a simple majority approval. There are no validation (minimum voter turnout) requirements.

A single-year lid lift ballot measure must:

- State the *maximum tax rate* to be imposed in the first year (for instance, \$1.50 per \$1,000 AV).
- If temporary, state the total duration of the levy (number of years).
- If permanent, state that it is permanent or that the dollar amount of the levy will be used for the purpose of computing the limitations for subsequent levies.
- State the exemption for senior citizens and persons with disabilities under [RCW 84.36.381](#), if the city wishes to exempt these individuals

The ballot measure also must comply with [RCW 29A.36.071](#), which limits the ballot title to 75 words or less.

The ballot measure does not have to state the purpose (although doing so is a good idea), the *increase* in the levy rate (for instance, an increase of \$0.20 per \$1,000 AV), or the maximum total levy (for instance, a total levy amount of \$300,000), although some jurisdictions have chosen to include this information. For examples of levy lid lift resolutions and supporting materials, see our [Levy Lid Lifts webpage](#).

According to MRSC's [Local Ballot Measure Database](#), most levy lid lifts submitted by cities in recent years have been single-year levy lid lifts, and about 75% of them have been successful. However, the results may vary significantly between jurisdictions depending upon what the revenue will be used for, local political factors, economic conditions, and other dynamics.

Multi-Year Levy Lid Lifts

Quick Summary

- Allows cities to exceed the 1% annual levy lid for any of their levies for up to 6 years.
 - If lid lift is temporary, all subsequent levies are limited to a 1% annual increase until the measure expires, at which point the maximum allowable levy reverts to what it would have been without the lid lift.
 - If lid lift is permanent, all subsequent levies are limited to a 1% annual increase and the levy increase never expires or reverts.
- Cannot use a levy lid lift if city is levying its statutory maximum rate.
- Must use all of your banked capacity before seeking a levy lid lift.
- Revenues are must be used for any limited purpose.
- Requires voter approval.

RCW: 84.55.050(2)

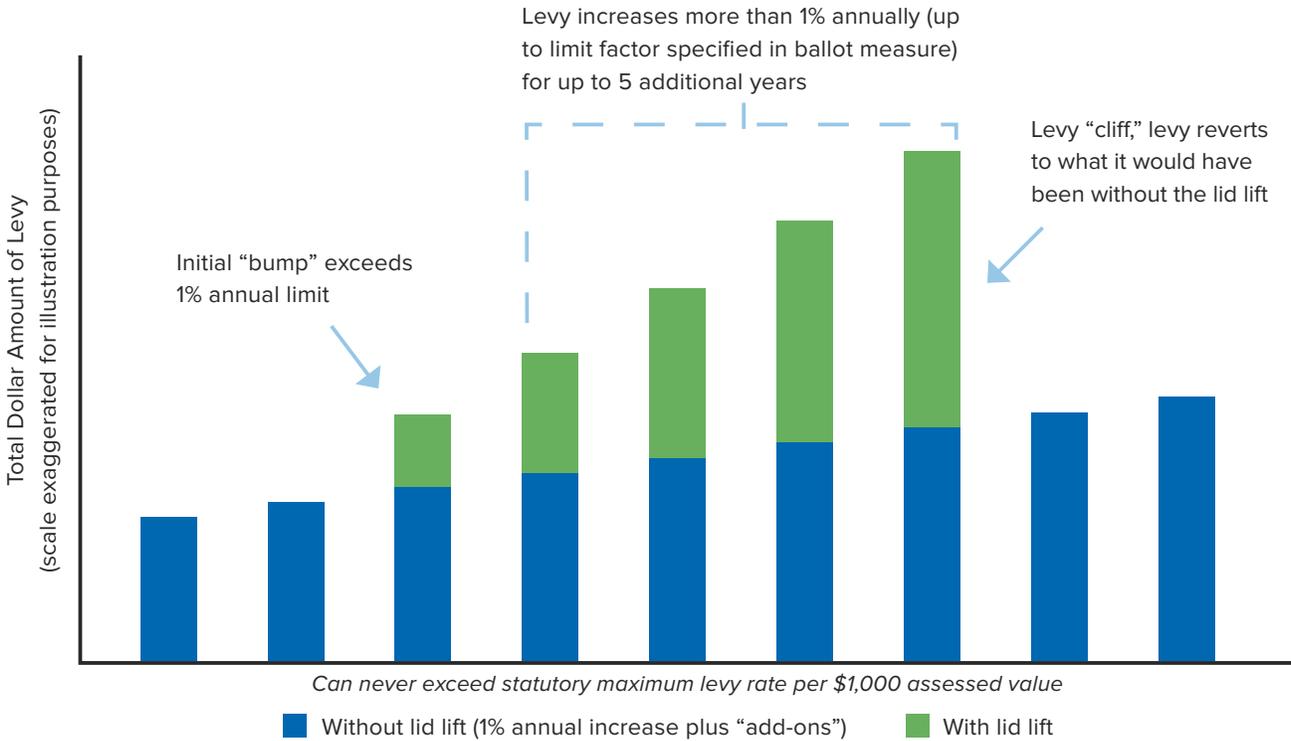
The state legislature added the “multi-year” levy lid lift option in 2003. Unlike the single-year (“one-bump”) levy lid lift, which bumps up once and is then used to calculate the 1% limitation for the remainder of the levy, a multi-year levy lid lift authorizes a jurisdiction to bump up or exceed the 1% limitation *each year* for up to six consecutive years.

Multi-year lid lifts may be temporary or permanent. With a temporary multi-year lid lift, the levy lid bumps up more than 1% each year (up to the limit factor specified in the ballot measure) for up to six years. When the lid lift expires, the levy lid reverts to what it *would have been* if the levy lid lift never existed and the city had increased its levy by the maximum allowable amount each year in the meantime ([RCW 84.55.050\(5\)](#)).

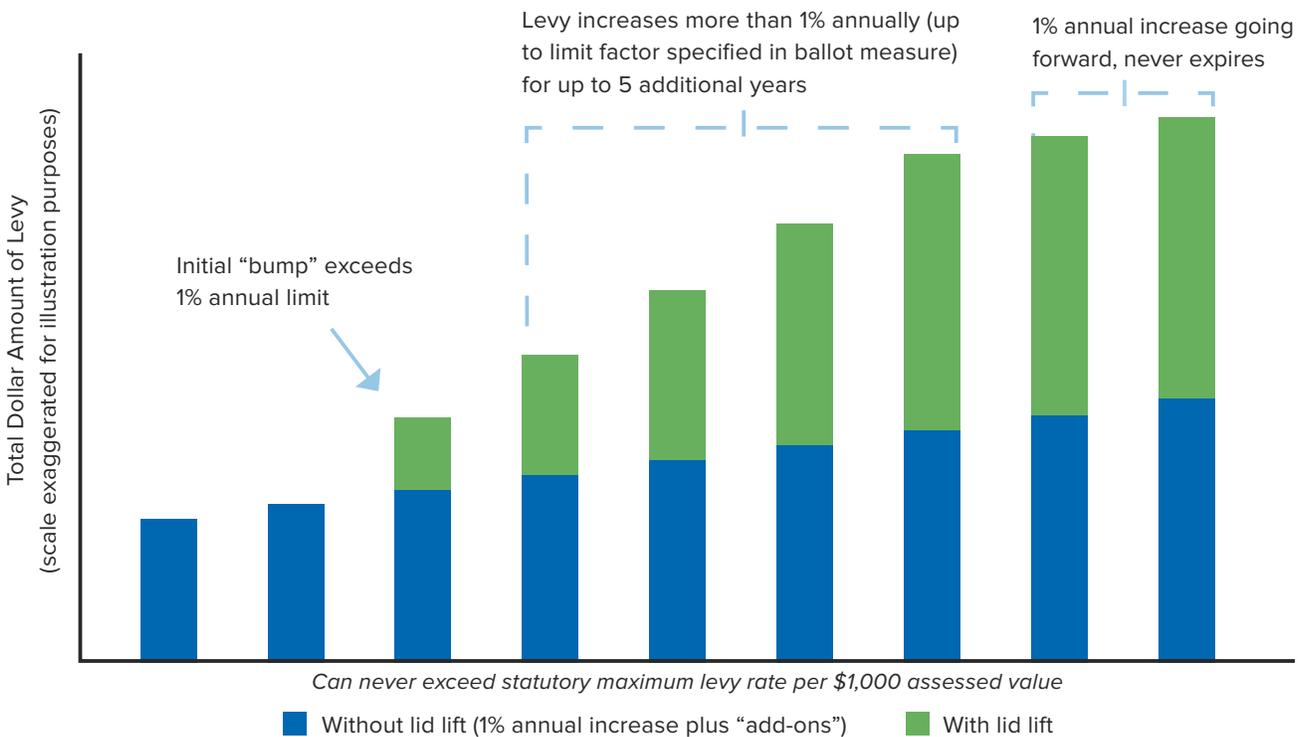
With a permanent multi-year lid lift, the levy lid bumps up more than 1% each year (up to the limit factor specified in the ballot measure) for up to six years. However, the lid lift does not revert and the maximum levy in the final year of the lid lift is then used as the base to calculate all future 1% levy limitations.

See the examples on the next page. Occasionally, a jurisdiction may adopt a “hybrid” approach, in which the levy amount increases more than 1% for up to six years, followed by several years of 1% increases, and then the levy lid lift expires and reverts to what it would have been without the lid lift.

MULTI-YEAR TEMPORARY LEVY LID LIFT



MULTI-YEAR PERMANENT LEVY LID LIFT



Use of Revenues

A multi-year levy lid lift may be used for any *limited* purpose, and the ballot must state the limited purposes for which the increased levy will be used. Both requirements are more restrictive than a single-year lid lift, which can be used for any lawful governmental purpose with no requirement to state the purpose. The statute does not define how limited a “limited purpose” must be, but some attempt should be made to identify a purpose that is narrower than “any general fund purpose” or “general governmental purposes.”

Multi-year lid lifts may also be used for debt service for up to nine years, in which case they may fall somewhere in between “temporary” and “permanent.” If a multi-year lid lift is used to pay debt service, the increased levy may not last for more than 9 years total. The multi-year lid lift would exceed the 1% limit for up to 6 years, and then the lid would increase up to 1% annually for the remaining years. After no more than nine years, the levy would expire and the levy lid would revert to what it would have been without the lid lift.

However, note that the amount of revenue generated by a levy lid lift is not guaranteed to provide the precise amount of revenue needed to repay the debt, since the revenues generated by the levy lid lift depend upon assessed valuation, levy rate limitations, and the 1% annual levy lid.

Cities within King County may not use a multi-year levy lid lift to supplant or replace existing funding. For supplanting purposes, “existing funds” means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. However, it is not considered supplanting if you use the levy lid lift to replace lost funding due to lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the jurisdiction’s control, and major nonrecurring capital expenditures ([RCW 84.55.050\(2\)\(b\)\(i\)](#)). There is no supplanting restriction for cities located in any other county.

Choosing a Limit Factor

The lift must state the total tax rate *for the first year only* – it *cannot* state the maximum rate in future years. For all subsequent years, the measure must identify a maximum “limit factor” which the total levy amount cannot exceed, which temporarily overrides the normal 1% annual levy lid. If the amount of the increase for a particular year would require a levy rate that is above the city’s maximum levy rate, the assessor will levy only the maximum amount allowed by law.

The limit factor can be stated as an annual percent increase or the rate of change in a specific inflation index, and it does not have to be the same each year. For instance, the limit factor might be 3% annually, or 6% annually for the first two years and 4% annually after that, or the annual inflation increase as measured by an index such as the Consumer Price Index (CPI). However, the ballot title may only have 75 words, so you do not have much space to get too creative or provide too much detail.



Practice Tip: If you are using an inflation index such as the CPI for your limit factor, make sure to specify exactly which inflation index (Seattle CPI-U, U.S. City Average CPI-W, etc.) you are using. The federal Bureau of Labor Statistics recommends using a national CPI index for measuring inflation, rather than a regional CPI index such as Seattle-Tacoma-Bellevue. Not only is the Seattle-Tacoma-Bellevue index published less frequently (every two months instead of every month), but it is based on a smaller sample and is therefore more volatile and subject to more measurement error. However, some local jurisdictions within Washington do use the Seattle CPI index for inflation.

In addition, you may want to consider including a provision to the effect of, “the percentage change in the [CPI-U, CPI-W, etc.] or 1%, whichever is greater,” which would allow you to take the normal 1% increase even if inflation falls below 1%. Otherwise, you could be limiting your jurisdiction’s ability to increase its levy if inflation drops below 1% during the multi-year lid lift timeframe. For instance, if the CPI only increases by 0.5% in the second year of your lid lift, you may be limited to a 0.5% increase in your levy amount, which would also reduce your maximum allowable levies in future years.

Ballot Measure Requirements

Multi-year lid lifts may be submitted at any primary or general election, but they may not be submitted at a February or April special election. Multi-year lid lifts require a simple majority vote, and there are no validation (minimum voter turnout) requirements.

A multi-year lid lift ballot measure must:

- State the total levy duration (number of years).
- If permanent, state that it is permanent or that the dollar amount of the levy will be used for the purpose of computing the limitations for subsequent levies.
- State the maximum tax *rate* to be collected in the first year (for instance, \$1.50 per \$1,000 AV)
- State the *limit factor* to be used for all subsequent years (stated as an annual percent increase or inflation index). The amounts do not need to be the same for each year.
- State the exemption for senior citizens and persons with disabilities under [RCW 84.36.381](#), if the city wishes to exempt these individuals

The ballot measure also must comply with [RCW 29A.36.071](#), which limits the ballot title to 75 words or less. For examples of levy lid lift resolutions and supporting materials, see our [Levy Lid Lifts webpage](#).

The ballot measure *cannot* state the maximum levy *rate* for subsequent years after the first year, since future rates cannot be calculated without first knowing the levy amount and the assessed valuation for each year. For instance, the ballot measure can state that it will increase the first year levy to \$3.10 per \$1,000 AV, but it *cannot* state that it will maintain the \$3.10 rate for the next five years.²⁶

²⁶ If the intention were to maintain the same levy rate over the lid lift period, the closest you could come would be to choose a “limit factor” in the ballot measure that would be equal to the year-over-year rate of increase in assessed value for your jurisdiction, excluding new construction and other “add-ons.” However, in jurisdictions with rapidly increasing assessed values, the rate could be so high that it might be politically unpalatable to voters.

Below are examples of correct and incorrect ballot measure language for multi-year levy lid lifts. These are examples only, based on real-life instances we have seen. Cities have some flexibility in how they phrase a levy lid lift ballot measure and do not have to follow this exact wording.

CORRECT

This proposition would restore the city's regular property tax levy rate to \$3.00 per \$1,000 of assessed valuation for collection in 2020 and authorizes annual increases up to 6% for each of the succeeding five years...

This proposition would authorize a maximum regular property tax levy rate of \$2.10 per \$1,000 of assessed valuation for collection in 2020 and sets the limit factor for the five succeeding years at 100% plus the annual percentage change in the CPI-W or 1%, whichever is greater...

Both of these ballot measures correctly establish a levy rate for the first year, with a limit factor (percentage increase) for the next 5 years.

INCORRECT

This proposition would increase the city's regular property tax levy rate to \$2.25 per \$1,000 of assessed valuation for collection in 2020, 2021, and 2022...

This measure incorrectly establishes a levy rate for three years.

This proposition would authorize a regular property tax levy rate of \$2.00 per \$1,000 assessed value for collection in 2020, increase the 2021-2023 maximum levies by \$0.30 per \$1,000 assessed value, and increase the 2024-2025 maximum levies by \$0.20 per \$1,000 assessed value...

This measure correctly establishes a levy rate for the first year but then incorrectly increases the levy rate for the next 5 years, instead of establishing a limit factor (percentage increase).

According to MRSC's [Local Ballot Measure Database](#), most of the levy lid lifts that cities have submitted in recent years have been single-year lid lifts, rather than multi-year lid lifts. According to our data, about 75% of those single-year levy lid lifts have been successful, compared to just half of the multi-year levy lid lifts. However, it is difficult to do a direct comparison between the success rates of single-year and multi-year levy lid lifts. Not only is the sample size for multi-year levy lid lifts much smaller and prone to greater fluctuation, but the results also may vary significantly between jurisdictions depending upon what the revenue will be used for, local political factors, economic conditions, and other dynamics.

VALIDATION/VOTER TURNOUT REQUIREMENTS

Voted bond measures, and certain voted property taxes, require a 60% supermajority *and* a minimum level of voter turnout, known as “validation.” If voter turnout is too low and a ballot measure does not meet its validation requirements, it will fail.

The only city revenue options requiring validation are bond measures, excess O&M levies, permanent EMS levies, or the initial imposition of a 6-year or 10-year EMS levy. (There are also some other county and special purpose district levies that require validation.) Levy lid lifts, sales taxes, and other voted revenue sources have no minimum turnout requirements and do not require validation.

Validation is calculated by comparing the voter turnout in the current election to the most recent general election, which means the validation requirements change from year to year depending on voter turnout the preceding November. Following each general election, the county auditor must determine the number of voters participating in the election for each taxing district (including each city or town) and provide that number to each taxing district (see [WAC 434-262-017](#)).

However, it is up to each taxing district to determine the validation requirements for any of its upcoming ballot measures and to determine whether the measure passed. The county auditor’s office counts the number of “yes” and “no” votes for each ballot measure but is *not* responsible for determining the minimum validation requirements or determining whether the measure passed. Consult your legal counsel and make sure you know whether your ballot measure requires validation and, if it does, what the minimum approval thresholds are.



Practice Tip: Validation is not a problem for most jurisdictions in most years, but it can occasionally create difficulties, particularly in low-turnout special elections (February and April) or in years immediately following high-turnout general elections. The highest turnout general elections, invariably, are those corresponding to the United States presidential election and Washington gubernatorial election, which occur on the same cycle every four years. So, pay particular attention to validation if your city is planning to run a bond measure or 60% voted property tax in February or April, or at any time in the year following a presidential election!

Validation Requirements for 60% Voted Property Taxes (Except Bonds)

The validation requirements for EMS levies ([RCW 82.52.069\(2\)](#)) and excess O&M levies ([Washington State Constitution](#), Article VII, Section 2(a)) are spelled out separately, but the requirements are the same. Note that validation is required for permanent EMS levies or the initial imposition of a 6-year or 10-year EMS levy, but not for an EMS levy lid lift or the “subsequent renewal” of an EMS levy at a rate previously approved by voters.

For excess O&M levies and EMS levies requiring validation, the measure must meet one of the following requirements:

- **40% minimum turnout:** The number of voters voting on the proposition must be at least 40% of the number of voters who cast ballots in the taxing district in the most recent state general election, **AND** the measure must receive at least a 60% “yes” vote.

- **“Backdoor” provision if turnout is under 40%:** If the number of voters voting on the proposition is less than 40% of the number of voters who cast ballots in the taxing district in the most recent state general election, the number of “yes” votes must be at least 60% of 40% (or, in plain English, 24%) of the number of votes cast in the most recent state general election. This means that the measure can still pass with less than 40% turnout, but the required “yes” percentage starts climbing above 60%. Theoretically, a property tax measure could pass with as little as 24% turnout using the “backdoor” method, but that would require the support of 100% of the voters. (This backdoor provision does *not* apply to bond measures.)

For an illustration of how validation works for 60% voted property taxes, see the examples below. In these examples, the number of voters who cast ballots in the city in the most recent general election is 1,000. If the number of voters voting on the proposition is at least 400 (40% of 1,000), the measure requires a 60% supermajority to pass. If the number of voters voting on the proposition is *less* than 400, the “backdoor” provision kicks in and the measure requires at least 240 “yes” votes (24% of 1,000) for passage.

Examples of Validation for 60% Voted Property Taxes (Except Bonds)

Number of voters casting ballots in most recent general election = 1,000

Number of voters voting on proposition	“Yes” votes	“No” votes	Election result	
800	480 (60%)	320 (40%)	PASSED received 60% yes vote	
600	354 (59%)	246 (41%)	FAILED did not receive 60% yes vote	
400	260 (65%)	140 (35%)	PASSED received 60% yes vote	<i>Turnout ≥ 40% of last general election</i>
350	210 (60%)	140 (40%)	FAILED did not receive 240 yes votes	<i>Turnout < 40% of last general election</i>
350	245 (70%)	105 (30%)	PASSED received 240 yes votes	<i>“Backdoor” method</i>

Validation Requirements for Bond Measures

The validation requirements for bond measures are stricter. Every voted bond measure requires a 60% supermajority in favor *and* minimum turnout of 40% compared to the most recent general election. There is no “backdoor” provision for bond measures. If turnout is below the 40% threshold, the bond measure will fail no matter how many “yes” votes it receives.

However, there is a slight discrepancy between the statutory and constitutional requirements for bonds, which creates some uncertainty as to exactly how to calculate bond measure turnout. The [Washington State Constitution](#), Article VII, Section 2(b) states that “the total number of voters *voting on the proposition* shall constitute not less than forty percent of the total number of voters voting in such taxing district at the last preceding general election” [emphasis added].

But [RCW 84.52.056\(1\)](#) states that “the total number of persons *voting at the election* must constitute not less than forty percent of the voters in the municipal corporation who voted at the last preceding general state election” [emphasis added].

The statutory requirement is slightly less stringent than the constitutional requirement, as the number of people *voting at the election* may be slightly greater than the number of people *voting on the proposition*. This is because ballot propositions sometimes have a small number of “undervotes” (voters who cast a ballot in the election but left that particular measure blank) or “overvotes” (voters selecting more than one choice, in which case the vote is not counted). The difference between the two standards is slight, but to be prudent we recommend using the more restrictive constitutional standard and counting the number of voters *voting on the proposition*.

For an illustration of how bond measure validation works, see the examples below, using the exact same numbers as in the property tax example on the previous page. Again, the number of voters who cast ballots within the city in the most recent general election is 1,000. If the number of voters voting on the proposition is at least 400 (40% of 1,000), the measure requires a 60% supermajority to pass. But this time there is no “backdoor” provision. If the number of voters voting on the proposition is *less* than 400, the bond measure fails no matter how many “yes” votes it receives.

Examples of Validation for Voted Bond Measures

Number of voters casting ballots in most recent general election = 1,000

Number of voters voting on proposition	“Yes” votes	“No” votes	Election result	
800	480 (60%)	320 (40%)	PASSED received 60% yes vote	
600	354 (59%)	246 (41%)	FAILED did not receive 60% yes vote	
400	260 (65%)	140 (35%)	PASSED received 60% yes vote	<i>Turnout ≥ 40% of last general election</i>
350	210 (60%)	140 (40%)	FAILED did not receive 40% turnout	<i>Turnout < 40% of last general election</i>
350	245 (70%)	105 (30%)	FAILED did not receive 40% turnout	<i>Measure fails</i>

ANNUAL LEVY CERTIFICATION PROCESS

As noted earlier, Washington uses a budget-based property tax system (see [What is a Budget-Based Property Tax?](#)). This means that cities and other taxing districts, as part of their annual budget process, must first establish the total dollar amount of property tax revenue they wish to generate for the upcoming year, subject to several restrictions. Once the total dollar amount is established, the levy rate is calculated based on the assessed valuation and other factors.

All cities must follow certain statutory procedures when setting their budgets, but one of the first steps in the budget process is the forecasting of revenues which includes the amount to be raised by property taxes. For details, see our [Budget Preparation Procedures for Cities and Towns](#) webpage.

When forecasting the amount to be raised by property taxes, all taxing jurisdictions including cities must consider whether they want to increase their levy amounts over last year's and by how much. Upon making this determination and holding the required public hearing ([RCW 84.55.120](#)), you must adopt an ordinance stating both the dollar increase for each levy and the percentage change from the prior year ([RCW 84.55.120](#)).²⁷ This levy increase requirement is *separate* from the levy certification requirement that states the total property tax levy being adopted within the budget. We know many attorneys want to combine these two requirements into one document, but it is a good idea to follow the statutory language and keep them separate.

According to the statutory language, the ordinance for the levy increase may cover a period of up to two years, but it must state the dollar increase and the percent change for each year individually.²⁸ The state Department of Revenue (DOR) [Property Tax Forms](#) webpage, under "Levy Forms," includes sample property tax ordinances (64 0101).

In addition, the city council must certify its desired levy amount for each of its levies to the county assessor no later than November 30 each year ([RCW 84.52.070](#))(2)). If the city fails to follow these requirements or misses the November 30 deadline, it may not increase next year's levy above the current levels.

DOR encourages cities to use its Levy Certification Form (64 0100) on its [Property Tax Forms](#) webpage.²⁹ DOR likes cities and other taxing districts to use this form because it cuts down on errors. The county assessors can easily see how much property tax each taxing district is asking for, rather than having to plow through an ordinance trying to find the relevant numbers. So, if you submit your DOR levy certification form and property tax levy ordinance together, you will make DOR and your county assessor happy. Be sure the amounts match those in your levy ordinance. These documents may be submitted electronically or via postal service, but either way we recommend you get confirmation that they were received.

²⁷ [RCW 84.55.120](#) states that the taxing district must adopt an "ordinance or resolution," However, the language in this statute was written with all taxing districts in mind. For special purpose districts and some counties, a resolution is the highest level of authority. For cities and towns, an ordinance is the highest level of authority. It is our conclusion that any taxing district must use its highest level of authority to pass this document, which means cities must specifically adopt an ordinance rather than a resolution.

²⁸ Note that the percent change from the prior year's levy expressed in this separate ordinance may be much greater than 1%, even if the taxing district is only taking the maximum allowable 1% increase. That is because the percent expressed in this ordinance is a percentage above the absolute dollar amount levied in the previous year, while the maximum allowable 1% increase is calculated on top of adjustments for new construction, annexations and changes in value of certain state-assessed property. If a taxing jurisdiction is utilizing "banked capacity," the percent expressed in this ordinance will also be greater than 1%. Neither of these situations is cause for alarm and neither violates the 101% levy lid.

²⁹ Note that this form was written on the assumption that the taxing districts adopt their budgets before November 30. However, cities are not required to adopt their budgets until December 31, and many cities have not yet adopted their final budgets by November 30, so you might need to edit the last sentence. Rather than saying "which was adopted following a public hearing held on _____," you might say "which will be adopted following a public hearing scheduled to be held on _____."

If your city has more than one levy – such as an EMS levy or affordable housing levy in addition to your general fund levy – you must adopt a separate ordinance for each levy and fill out a separate levy certification form for each.

Cities with a population of 10,000 or more may also need to adopt a separate ordinance of “substantial need” if the annual inflation rate falls below 1% on September 25 (see [The Implicit Price Deflator and “Substantial Need”](#)).

The levy that your city imposes will be collected during the upcoming calendar year. The year that the levy ordinance is adopted is sometimes referred to as the “levy year,” with the following year when revenues are received referred to as the “collection year.”



Practice Tip: Even if your city is not increasing its levy at all, you should still adopt an ordinance stating that you are increasing your levy by \$0 (a 0% increase) plus the increase due to new construction and add-ons. Doing so will automatically preserve, or “bank,” your future levying capacity, should you decide you need those funds at a later date (see [Banked Capacity](#)).

RECEIPT OF PROPERTY TAX REVENUES

Property taxes are due on April 30 and October 31, with penalties incurred if the payment is more than one month late ([RCW 84.56.020](#)). In some counties, the treasurer transfers the city’s share of the revenue received on a daily basis. In other counties, the treasurer makes the transfer on the 10th day of the month, paying interest on the balances it has held until that time.³⁰ This means that cities receive the bulk of their property tax revenue in May and June (for the April deadline) and in November and December (for the October deadline).

Because these revenues are primarily received during two times of the year, cities that are heavily dependent on property taxes should budget in a strategic way to ensure sufficient ending fund balance (cash carryover) and maintain a healthy cash flow from the end of the year to the next property tax receipting cycle. For guidance, see MRSC’s [Fund Balance and Reserve Policies](#) webpage.

³⁰ See [RCW 84.56.230](#); [RCW 36.29.110](#); *Seattle v. King County*, 52 Wn. App. 628 (1988), rev. denied, 112 Wn.2d 1002 (1989) (Cities entitled to interest accumulated on tax collection prior to distribution).

Retail Sales and Use Taxes

The State of Washington imposes a 6.5% sales tax on most retail sales within the state, and cities and towns (as well as counties, transit districts, and public facilities districts) can impose local sales taxes on top of the state rate. (For the purposes of this section, “sales tax” means a “sales and use tax” unless otherwise noted.)

Sales tax rates vary from city to city depending on exactly which taxes have been imposed – and at what rates – by the city, county, and other taxing districts.

Most of a city’s sales tax revenue is generated from the “basic” (or “first half”) and “optional” (or “second half”) sales taxes, which are unrestricted and may be used for any lawful governmental purpose. In addition, cities and towns also have a number of other sales tax options available. However, these tax options are less flexible and must be used for certain designated purposes.

Generally speaking, most sales taxes beyond the “first half” and “second half” require voter approval with a simple majority approval. Most sales taxes may be imposed permanently with no maximum duration, but there are some exceptions. The Department of Revenue collects and distributes these local sales taxes, retaining 1% as an administrative fee in most cases ([RCW 82.14.050](#)).³¹

Cities and towns were first granted the authority to impose a local sales and use tax in 1970, and at the time it was considered the most significant change in taxing authority in Washington State. Sales taxes are classified as excise taxes by the Washington State Supreme Court. Excise taxes are the broadest category of taxes and include all taxes other than property tax, and the sales and use tax is the largest sector of excise tax.

For the majority of cities and towns in Washington, sales taxes represent the second-largest revenue source in the general fund, preceded only by property taxes. However, there are a significant number of cities where sales taxes represent the largest general fund revenue source. As retail shopping continues to evolve and shift to an Internet-based market, some cities may see shifts in the amount of sales tax income and its importance to the city budget.

In 2008 the State of Washington adopted a destination-based sales tax system known as the “streamlined sales tax.” Under this agreement, the point of sale (the location where sales tax is calculated) is considered to be the point of delivery (i.e. the destination). For example, if you buy office furniture online that is shipped from a warehouse in Auburn and have it delivered to Port Angeles, you will pay the local sales tax rate applicable for the City of Port Angeles. But if you take possession of the merchandise at a retail business location in Auburn, you will pay the local sales tax rate applicable in the City of Auburn.

With the switch to a destination-based sales tax, some cities and other local governments lost a significant amount of sales tax revenue. To offset these losses, the legislature established streamlined sales tax (SST) mitigation payments to compensate the affected jurisdictions (see [Streamlined Sales Tax \(SST\) Mitigation Payments](#)).

Sales taxes can be especially advantageous for cities with significant shopping or commercial centers due to the large sales volumes and significant tax revenues that can be generated. They can also be helpful for cities with tourist attractions, since sales taxes can generate extra tax revenue from out-of-town visitors.

³¹ By statute, the DOR administrative fee is capped at a maximum rate of 2%. However, by contract DOR has established an administrative fee of 1%.

Sales taxes also have some drawbacks. In particular, sales tax revenues are particularly sensitive to economic conditions, which means that if the economy slows down or a major retailer closes, city budgets may be hard hit. In addition, Washington’s tax structure – and particularly its heavy reliance on sales taxes and lack of a state income tax – has been criticized as one of the most regressive in the country, meaning the tax burden (as a percent of income) falls hardest upon low-income households, who have to spend a large portion of their income on retail goods and basic needs.

But regardless, under current state law sales taxes are one of the largest and most important revenue sources available to cities and towns in Washington State.

WHAT ITEMS ARE TAXED?

Sales taxes apply to most retail sales of “tangible personal property” within Washington, as defined in [RCW 82.04.050](#). In addition, beginning in 2018 the Marketplace Fairness Act requires all “remote sellers” without a physical presence in the state (such as Internet or mail-order retailers) to either collect and remit sales taxes on all purchases or to prominently post and track information on use taxes.

Services to individuals and businesses – things like haircuts, medical bills, consultant fees, etc. – are not “personal property,” and most services are not subject to sales tax. However, some services are subject to sales tax, as listed in [RCW 82.04.050](#). For example, lodging and all other services provided by a hotel, motel, etc. are subject to the retail sales tax, as are landscape maintenance and physical fitness activities.

Local governments must pay and collect sales tax on all taxable purchases, just like any business or consumer, unless there is a specific exemption written into state law. See [RCW 82.08.010\(3\)](#), which defines “buyer,” “purchaser,” and “consumer” to include local government entities, and [WAC 458-20-189](#) which discusses sales tax applicability to local governments and exemptions.

SALES TAX EXEMPTIONS

There are a large number of specific sales tax exemptions listed in [chapter 82.08 RCW](#). These exemptions change with some frequency as new exemptions are written and older ones expire or are repealed. Perhaps the most visible exemptions for consumers are prescription drugs ([RCW 82.08.0281](#)) and groceries ([RCW 82.08.0293](#)), although alcohol, restaurant meals, and prepared foods sold in grocery stores are taxable.

Sales tax exemptions that may be of particular interest to cities include:

- Copies made in response to public records requests ([RCW 82.08.02525](#));
- Sales from one political subdivision to another (or use of another jurisdiction’s personal property) directly or indirectly due to annexations, mergers, incorporations, or contractual consolidations (see [RCW 82.08.0278](#) and [RCW 82.12.0274](#)); and
- Labor and services on transportation projects ([RCW 82.04.050\(10\)](#) and [WAC 458-20-171](#)).

In addition, there is a qualifying sales tax exemption for residents of other states or Canadian provinces for goods they purchase that are to be used out-of-state if those states or provinces either have no sales tax or if the sales tax is less than 3% ([RCW 82.08.0273](#)). The most notable examples are Alaska, Montana, and Oregon residents, who are eligible for this exemption because they do not have a state sales tax.

However, this nonresident exemption was significantly changed effective July 1, 2019. All sales to out-of-state customers must now be taxed at the time of purchase, and the customer must apply for a refund from the state Department of Revenue at a later date. The refund only applies to the 6.5% state portion of the sales tax; there is no refund provided for any local sales taxes the customer pays (which are described in more detail in the rest of this chapter).

To claim the exemption, the nonresident buyer must keep records of all their taxable purchases in Washington over the course of the calendar year. Once per year, the buyer may request a refund for sales taxes paid on all purchases made in Washington during the previous calendar year. The request must include appropriate documentation of all purchases along with proof of nonresidency.

The minimum refund that may be claimed is \$25 – in other words, nonresidents must spend approximately \$385 or more in Washington, before tax, during a single calendar year to be eligible for this refund. (Since only the 6.5% state portion of the sales tax is refunded, and 6.5% of \$385 is just over \$25.)

WHAT IS A USE TAX?

If purchases are made out-of-state by a Washington resident, business, or governmental entity for use in Washington, and the sales tax paid is less than the rate being levied within their local jurisdiction, state law requires that a “use tax” be calculated and paid to make up the difference (see [chapter 82.12 RCW](#) and [WAC 458-20-178](#)).

For example, if you buy office furniture or equipment in Oregon (where there is no sales tax) and bring it back to Washington, and the sales tax rate in your city is 8.2%, you owe a use tax of 8.2% on the purchase price. Likewise, if you buy similar furniture or equipment in Idaho, where the sales tax rate is 6%, and your local sales tax rate is 8.2%, you owe a 2.2% use tax.

Practically speaking, few individual consumers pay a use tax, unless the purchase is a car or truck where the use tax must be paid before the vehicle can be licensed. Otherwise, use taxes paid by individuals depend on voluntary compliance and remote sellers’ compliance with the Marketplace Fairness Act (see below).

However, Washington businesses typically do pay use taxes on out-of-state purchases because they are subject to regular auditing by the Department of Revenue (DOR). Similarly, cities should be aware that DOR audits local governments on a regular basis to ensure compliance with state tax filing requirements. Failure to pay the appropriate use tax can result in fines and interest due.

Prior to 2018, “remote sellers” without a physical presence in Washington State and those “marketplace facilitators” who facilitated the sale of products provided by remote sellers were not required to charge any sales tax for Internet or mail-order sales, although some opted to do so voluntarily. In situations where neither the remote sellers nor the facilitators charged sales tax, use tax was due but seldom collected.

Beginning in January 2018, the Marketplace Fairness Act in Washington State required almost all remote sellers to either collect sales taxes on purchases delivered to Washington, or to inform consumers that use taxes were due and to provide annual reports on this activity to both the consumer and the state Department of Revenue (DOR). Most remote sellers opted to collect and remit sales taxes directly to DOR, rather than track and report use taxes.

The collection of sales and use tax from remote sellers and marketplace facilitators was reinforced with the 2018 U.S. Supreme Court decision in [South Dakota v. Wayfair, Inc., No. 17-494](#), wherein the Court determined that state and local governments could require remote and Internet sellers to collect sales taxes. As a result of this decision, DOR released notice that remote sellers and marketplace facilitators with \$100,000 or more of gross retail sales or 200 or more retail transactions during a calendar year are required to collect and remit sales tax on all taxable sales and no longer have the option to report use taxes.

The Marketplace Fairness Act, coupled with the *Wayfair* decision, has resulted in a significant increase in sales tax revenues and should eliminate the vast majority of use tax noncompliance issues for Internet and catalog orders.

“BASIC” SALES TAX/FIRST HALF-CENT

Quick Summary

- Sales tax of 0.5% – revenues are unrestricted and may be used for any lawful governmental purpose.
- Currently imposed by all cities and towns.
- Revenue shared with county.

RCW: [82.14.030\(1\)](#)

Any city or town may impose a non-voted sales and use tax at the rate of 0.5% on any taxable event ([RCW 82.14.030\(1\)](#)). The Department of Revenue calls this tax the “basic” or “regular” 0.5% in its reports, but it is also commonly referred to as the “first half-cent” or “first half” to differentiate it from the “second half-cent” described on the next page.

Counties have the same authority, and as of 2019 every city, town, and county in Washington has imposed the first half-cent. However, the combined city/county rate may not exceed 0.5 percent, so cities and counties must share the revenues as described below.

Use of Revenues

The revenues are unrestricted and may be used for any lawful governmental purpose.

Revenue Sharing

When both the city and county are levying the first half, the county must credit back the full amount of the city’s first half sales tax under [RCW 82.14.040\(1\)](#) so that the combined rate does not exceed 0.5%. However, 15% of the first half-cent collected within the city must then be distributed to the county. In effect, this drops the city’s first half-cent authority to 0.425% (85% of 0.5%), with the remaining 0.075% (15% of 0.5%) going to the county.

See the table below. In addition, the Department of Revenue retains 1% as an administrative fee.

Revenue-sharing for “first half” sales taxes

If city imposes	and county imposes	City taxpayers pay	City’s effective sales tax rate is
0.5%	0.5%	0.5%	0.425% (85% of 0.5%)

“OPTIONAL” SALES TAX/SECOND HALF-CENT

Quick Summary

- Sales tax up to 0.5% – revenues are unrestricted and may be used for any lawful governmental purpose.
- Currently imposed at the maximum rate by all cities and towns except Asotin and Clarkston.
- Revenue shared with county.

RCW: [82.14.030\(2\)](#)

Any city or town may impose an additional non-voted sales tax in increments of 0.1% up to 0.5% ([RCW 82.14.030\(2\)](#)). DOR refers to this as the “optional” sales tax – often referred to as the “second half-cent” or “second half.”

Counties have the same authority to adopt this optional second half sales tax. As with the first half-cent, the total combined city/county rate may not exceed 0.5%, so cities and counties must share the revenue as described below.

As of 2019, every city or town has imposed the full 0.5% second half-cent except for Asotin and Clarkston (which have both imposed 0.3%), while every county has imposed the full 0.5% second half-cent except for Asotin County (which imposes 0.3%) and Klickitat County (which has not imposed a second half sales tax).

Implementation requires a majority vote of the legislative body and does not require voter approval. However, changes to the tax rate are subject to possible referendum even if your city has not otherwise adopted powers of initiative and referendum ([RCW 82.14.036](#)).

Use of Revenues

The revenues are unrestricted and may be used for any lawful governmental purpose.

Revenue Sharing

The revenue-sharing provision is similar to the first half/basic 0.5% sales tax. When the county imposes the second half at a rate equal to the city – which almost all counties have – the county must credit back the full amount of the city’s second half sales tax under [RCW 82.14.040\(2\)](#). The city will then receive 85% of its second half revenues, with the remaining 15% distributed to the county.

For most cities, the city’s rate effectively drops to 0.425% (85% of 0.5%), with the remaining 0.075% (15% of 0.5%) going to the county. For cities in Asotin County, where both the cities and county have imposed a 0.3% sales tax, the city’s rate equates to 0.255% (85% of 0.3%), with the remaining .045% (15% of 0.3%) going to the county.

For those cities within counties that impose a rate less than the city, the city will receive 85% of the county’s rate and 100% of the sales and use tax revenues above the county’s rate ([RCW 82.14.040\(2\)](#)). As of 2019, this applies only to cities in Klickitat County.

When the city imposes its second half-cent at a rate less than the county – which no cities in Washington do as of 2019 – the city only receives an amount equal to 85% of the city rate, and the additional sales tax rate above the city rate will be distributed entirely to the county.³²

See the examples below. In addition, the Department of Revenue retains 1% as an administrative fee.

Examples of revenue-sharing for “second half” sales taxes

If city imposes	and county imposes	City taxpayers pay	City’s effective sales tax rate is
0.5%	0.5%	0.5%	0.425% <i>(85% of 0.5%)</i>
0.3%	0.3%	0.3%	0.255% <i>(85% of 0.3%)</i>
0.5%	0.3%	0.5%	0.455% <i>(85% of first 0.3% plus 100% of remaining 0.2%)</i>
0.5%	No sales tax	0.5%	0.5% <i>(100% of 0.5%)</i>

³² Also see [AGO 2006 No. 18](#) for a comprehensive explanation of how the county and city rates interrelate under different scenarios.

AFFORDABLE HOUSING & RELATED SERVICES SALES TAX

Quick Summary

- Sales tax up to 0.1% – revenues are restricted and must be used for affordable housing, mental health, and related services.
- May be imposed by any city or town as long as county has not imposed it first.
- May be approved by voters or legislative body.

RCW: 82.14.530

Any city or town may levy a sales tax up to 0.1% for affordable housing ([RCW 82.14.530](#)), as long as the county has not done so first. This option was enacted by the state legislature in 2015 and originally required voter approval, but effective June 11, 2020 voter approval is optional and this revenue source may now be approved by the legislative body with a simple majority vote.

Counties have the “right of first refusal,” and most counties originally faced a deadline of October 9, 2015 to impose this sales tax, after which any city within the county could impose the tax if the county had not done so. Several cities successfully passed this sales tax after the 2015 deadline. The 2020 legislation has reinstated a county deadline of September 30, 2020, after which any city may impose this tax and/or present a ballot measure to the voters as long as the county has not already done so.

Use of Revenues

At least 60% of the revenue must be used for constructing affordable housing, constructing mental and behavioral health-related facilities, or funding the operations and maintenance costs of new units of affordable housing and facilities where housing-related programs are provided. The affordable housing and facilities may only be provided to people within specified population groups whose income is 60% or less of the county median income. For specific eligibility language, see [RCW 82.14.530\(2\)\(b\)](#).

The remaining funds must be used for the operation, delivery, or evaluation of mental and behavioral health treatment programs and services or housing-related services. No more than 10% of the revenue may be used to supplant existing local funds.

Ballot Measure Requirements

If a city chooses to (optionally) submit this sales tax to voters, the ballot measure must be approved by a simple majority of voters and may be submitted at any special, primary,³³ or general election. According to MRSC’s [Local Ballot Measure Database](#), voters have approved this sales tax in four cities as of June 2020 (Anacortes, Ellensburg, Olympia, and Port Angeles). A fifth measure in Stevenson was narrowly rejected by voters.

Revenue Sharing

The city retains 100% of the revenue, minus a 1% administrative fee for the Department of Revenue. Effective June 11, 2020, if King County imposes this tax it is required to spend a certain percentage of the revenues within the boundaries of cities over 60,000 population.

³³ [RCW 82.14.530](#) states that the tax must be submitted at “a special or general election,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

AFFORDABLE HOUSING SALES TAX CREDIT (HB 1406)

Quick Summary

- Credit against 6.5% state sales tax. Credit is either 0.0073% or 0.0146% depending on whether city has a “qualifying local tax” in place by July 28, 2020.
- Requires adoption procedures that must be imposed no later than July 27, 2020; expires after 20 years.
- Revenues are restricted and must be used for affordable and supportive housing. Cities under 100,000 population may also use revenues for low-income rental assistance. Cities and counties may pool resources.

RCW: [82.14.540](#)

Effective 2019, SHB 1406 establishes a new affordable housing sales tax credit available to all cities, towns, and counties that choose to “participate.” This is a credit against the 6.5% state sales tax rate, so it will not increase the tax rate for consumers but instead shares a portion of the state sales tax with cities, towns and counties. This sales tax distribution will expire 20 years after the jurisdiction first imposes the tax (in either 2039 or 2040).

This is a complicated piece of legislation that requires all cities, towns and counties to act quickly by deciding whether they wish to participate and, if so, adopting a “resolution of intent” no later than January 27, 2020 and the enacting ordinance to impose the sales tax credit no later than July 27, 2020. For full details, see our blog post [SHB 1406: Understanding the Affordable Housing Sales Tax Credit](#), which includes links to revenue estimates, supporting information from the Association of Washington Cities (AWC), and examples of local resolutions and ordinances.

The information below will focus strictly on the tax rate and use of revenues, for those jurisdictions that choose to participate.

Tax Rate

For participating cities that have a “qualifying local tax” in place by July 27, 2020: the tax rate will be 0.0146% of taxable retail sales. A “qualifying local tax” (QLT) is a local property or sales tax that the city has imposed prior to July 27, 2020, with the revenues dedicated solely to affordable housing or related uses. The four QLT options are:

- An affordable housing levy (see [Affordable Housing Levy](#));
- An affordable housing sales tax (see [Affordable Housing & Related Services Sales Tax](#));
- A levy lid lift (see [Levy Lid Lifts](#)) that is restricted solely to affordable housing; or
- A mental health and chemical dependency sales tax (see [Mental Health & Chemical Dependency Sales Tax](#)), which is only authorized by statute for those cities of at least 30,000 population located within Pierce County.

For participating cities that do not have a qualifying local tax: the tax rate will be 0.0073% of taxable retail sales within their jurisdiction, but only if your county also elects to participate. If your county does not participate, the city will receive the full 0.0146% through July 27, 2020, but after that the city will not receive any further sales tax credit revenues. According to AWC, this was due to a drafting error in the legislation; a bill to fix the drafting error and extend the deadline to adopt a qualifying local tax passed the legislature during

the 2020 session but was vetoed by the governor due to the unexpected fiscal impacts of the coronavirus pandemic on the state budget.

For participating counties: the tax rate will be 0.0146% of taxable retail sales within the unincorporated areas. (Counties do not need a qualifying local tax to receive the maximum distribution.) Within the incorporated areas, participating counties will receive 0.0146% minus the city's tax rate. For instance, if a city has a QLT and receives the full 0.0146%, the county will not receive any revenues from that city's taxable sales. If a city does not have a QLT, the participating city will receive the 0.0073% "half share" and the county will also receive a 0.0073% half share within that city.

Maximum Distribution Cap

The legislation sets a cap on the maximum revenues any jurisdiction may receive per state fiscal year (July 1 to June 30). The cap is either 0.0073% or 0.0146% of the taxable retail sales within the jurisdiction during the 2019 state fiscal year (July 1, 2018 – June 30, 2019) depending upon whether the city has a qualifying local tax or not.

If the county adopts the imposing legislation prior to the city(s) within its boundaries, the county's maximum revenue cap will be calculated based on the total countywide taxable retail sales in FY 2019, including both the unincorporated and incorporated areas of the county. However, if any city adopts their enabling ordinance before the county, that city's taxable retail sales will be subtracted from the county's taxable retail sales, resulting in the county's annual maximum distribution cap being reduced for the entire 20-year state tax sharing period.

Just like state shared revenues, distributions begin in the month of July each year, and if any jurisdiction reaches the maximum cap before the end of the fiscal year (the following June 30), the state will cease distributions to that jurisdiction until the beginning of next state fiscal year.

Use of Revenues

For counties over 400,000 population and cities over 100,000 population: The funds may only be used for:

- Acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under [RCW 71.24.385](#); or
- Operations and maintenance costs of new units of affordable or supportive housing.

Participating cities and counties may finance loans or grants to nonprofit organization or public housing authorities to carry out the purposes of the bill and may pledge the tax proceeds for repayment of bonds in accordance with debt limitations imposed by the state constitution or statute.

Any participating city or county may enter into an interlocal agreement with other cities, counties, and/or housing authorities to pool and allocate the tax revenues received under SHB 1406 to fulfill the intent of the legislation.

For counties under 400,000 population and cities under 100,000 population: The funds may be used for the same purposes listed above, but they may also be used to provide rental assistance to tenants that are at or below 60% of the median income of the county or city that is imposing the tax.

ANNEXATION SERVICES SALES TAX

Quick Summary

- Credit against state sales tax; may only be imposed by certain cities within King, Pierce, and Snohomish counties that annexed territory prior to January 1, 2015.
- Maximum credit is generally 0.1 - 0.2% and may not exceed 10 years.
- Revenues must be used for providing municipal services to the annexed area.

RCW: [82.14.415](#)

A few cities located within King, Pierce, or Snohomish counties (counties with a population greater than 600,000) that annexed territory prior to January 1, 2015, imposed an “annexation services tax” ([RCW 82.14.415](#)) under the following situations:

- The population of the annexed territory was at least 10,000 (or, for Bellevue, at least 4,000),
- The annexation was consistent with its comprehensive plan required by the Growth Management Act ([chapter 36.70A RCW](#)), and
- City council determined by resolution or ordinance that the projected cost of providing municipal services to the annexed area exceeded the projected general revenue that the city would otherwise receive from the area on an annual basis.

The annexation services tax is a credit against the 6.5% state sales tax rate, which means the total sales tax rate within the annexed area will not change. The maximum sales tax credit is generally 0.1% for eligible annexed areas with a population of less than 20,000 and 0.2% for eligible annexed areas with a population greater than 20,000.³⁴

The tax must be imposed at the beginning of the next state fiscal year (July 1) following the effective date of the annexation and may be imposed for a maximum of 10 state fiscal years.

However, the total tax revenues received may not exceed the “threshold amount” – the difference between the projected cost of providing services to the area and the projected general revenues generated in the area. If the tax revenues exceed the threshold amount in any year, the city must notify the Department of Revenue (DOR) and DOR will suspend the tax distribution for the remainder of the state fiscal year.

No later than March 1 each year, the city must provide DOR with a certification of the city’s true and actual costs of providing municipal services to the annexed area, projections for the next state fiscal year, and notice of any applicable rate changes.

Use of Revenue

All revenues must be used solely to provide, maintain, and operate municipal services for the annexed area.

34 There are exceptions for areas between Seattle and Burien.

CRIMINAL JUSTICE SALES TAX

Quick Summary

- Sales tax of 0.1% – revenues are restricted and must be used for criminal justice.
- May only be imposed by county, but revenue shared with cities.
- Does not require voter approval.

RCW: 82.14.340

Any county may impose a non-voted 0.1% sales tax for criminal justice purposes ([RCW 82.14.340](#)), and most counties currently do so. This sales tax may only be imposed by the county, but the county must share its revenues with all cities and towns in the county.

The sales tax is subject to possible referendum under [RCW 82.14.340](#) and [RCW 82.14.036](#), regardless of whether or not the county otherwise has powers of initiative and referendum.

Use of Revenues

The statute defines “criminal justice purposes” as:

[A]ctivities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in [RCW 70.123.020](#).

Revenue Sharing

10% of the revenues are distributed to the county, while the remaining 90% is split between the county and its cities on a per capita (population) basis. The county’s per capita share is based on unincorporated population.

See the example below. In addition, the Department of Revenue retains 1% as an administrative fee.

Example of Revenue-Sharing for County Criminal Justice Sales Tax

Total sales tax revenues	\$1,000,000
County receives 10%	\$100,000
Remainder for distribution	\$900,000

Jurisdiction	Population	Percent of Countywide Population	Remaining Revenues Distributed (% population x \$900,000)
City A	3,500	5%	\$45,000
City B	21,000	30%	\$270,000
City C	7,000	10%	\$90,000
Unincorporated county	38,500	55%	\$495,000
TOTAL	70,000	100%	\$900,000

CULTURAL ACCESS PROGRAM SALES TAX

Quick Summary

- Sales tax up to 0.1% – revenues are restricted and must be used to benefit or expand access to nonprofit cultural organizations.
- Maximum duration of 7 years; may be renewed for additional 7-year periods.
- May be imposed by any city or town.
- Requires voter approval.

RCW: [82.14.525](#); [chapter 36.160](#)

Any city, town, or county may impose a sales tax up to 0.1% for up to seven years to benefit or expand access to nonprofit cultural organizations ([RCW 82.14.525](#); [chapter 36.160 RCW](#)). The measure requires voter approval.

Counties have similar authority under the same statute. The enabling legislation (see [RCW 36.160.030](#)) provided counties with the first right of refusal and did not allow a city to place this measure on the ballot unless either (a) the county adopted a resolution forfeiting its right, or (b) the county did not place such a proposition before the voters by June 30, 2017.

Since the 2017 deadline has passed, any city or town may now place a cultural access program sales tax on the ballot. While the statutory language is not entirely clear, it is our interpretation that a city and a county may *not* impose this sales tax concurrently. In other words, if the county has enacted this sales tax and created a cultural access program, no city within that county may impose this sales tax as long as the county's tax is in place. But if the county has not imposed such a sales tax, or if the county's tax expires and is not renewed, the city may still submit this measure to voters.

While most of the provisions within [chapter 36.160 RCW](#) refer specifically to counties, not cities, [RCW 36.160.030](#) states that if a city creates a cultural access program, “all references in this chapter to a county must include a city that has exercised its authority under this subsection, unless the context clearly requires otherwise.”

Use of Revenues

The revenues must be used in accordance with [RCW 36.160.110](#), which is very detailed. Originally King County had separate funding criteria than the rest of the state, but effective June 11, 2020 all cities and counties statewide are subject to the same criteria. The funds may be used for a number of purposes related to cultural access programs, including start-up funding, administrative and program costs, capital expenditures or acquisitions, technology, and public school programs to increase cultural program access for students who live in the city.

A “cultural organization,” as defined in [RCW 36.160.020](#), must be a 501(c)(3) nonprofit corporation with its principal location(s) in Washington State and conducting a majority of its activities within the state. The primary purpose of the organization must be the advancement and preservation of science or technology, the visual or performing arts, zoology (national accreditation required), botany, anthropology, heritage, or natural history.

State-related cultural organizations are eligible, but the funding may not be used for local or state government agencies, radio/TV broadcasters, cable communications systems, internet-based communications services, newspapers, magazines, or fundraising organizations that redistribute money to multiple cultural organizations.

Ballot Measure Requirements

The sales tax must be approved by a simple majority of voters and may be submitted at any special, primary,³⁵ or general election. It may be re-imposed for one or more additional 7-year periods, but voter approval is required each time. According to MRSC's [Local Ballot Measure Database](#), as of 2019 Tacoma is the only city to attempt *this sales tax authority and the measure passed. King County also attempted a countywide sales tax, which narrowly failed.*

Revenue Sharing

There are no revenue-sharing provisions. The city retains 100% of the revenue, and unlike most local sales taxes that have a 1% administrative fee withheld by the Department of Revenue, this sales tax must be collected and distributed to the city or town at no cost.

Property Tax Alternative

As an alternative, any city or town may also levy a property tax under [RCW 84.52.821](#) for cultural access programs (see [Cultural Access Program Levy](#)). From a revenue standpoint, the property tax and sales tax options are roughly equivalent: the amount of revenue generated by the property tax may not exceed 0.1% of the retail sales in the city for the most recent calendar year, both options require a simple majority vote, and both are capped at seven years but may be renewed with voter approval.

Deciding whether to impose the sales tax or the property tax option is a policy decision for the city to make, although it is worth noting that the property tax levy could be reduced or eliminated through prorationing if the \$5.90 or \$10 property tax caps are exceeded.

The sales tax and property tax options are mutually exclusive. If a city imposes the sales tax option it may *not* impose the property tax option for as long as the sales tax is in effect, and vice versa ([RCW 36.160.080](#)).

³⁵ [RCW 82.14.525](#) states that the tax must be submitted at “a special or general election,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

MENTAL HEALTH & CHEMICAL DEPENDENCY SALES TAX

Quick Summary

- Sales tax up to 0.1% – revenues are restricted and must be used for mental health and drug treatment purposes.
- Only available to cities over 30,000 population within Pierce County.
- Does not require voter approval.

RCW: 82.14.460

Mental health and chemical dependency sales taxes ([RCW 82.14.460](#)) are almost entirely imposed by and distributed to counties. However, the statute authorizes any city with a population over 30,000, located within Pierce County, to impose a sales tax up to 0.1% for mental health and drug treatment purposes if the county has not already done so.³⁶ Some jurisdictions may refer to this sales tax with other names, such as the “mental illness and drug dependency” (MIDD) sales tax or the “treatment sales tax.”

This sales tax is imposed by the city council and does not require voter approval. As of 2019, Pierce County has not imposed a mental health sales tax, and according to MRSC’s [Tax and Population Data](#), Tacoma is the only city currently imposing this tax.

Use of Revenues

All revenue must be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services.

Revenue Sharing

There are no revenue-sharing provisions. The city retains 100% of the revenues, minus a 1% administrative fee for the Department of Revenue.

³⁶ This statute applies to any city with a population over 30,000 in a county with a population over 800,000 that has not imposed a county-level mental health tax. As of 2019, King, Pierce, and Snohomish counties are the only counties over 800,000 population. Of those three, Pierce County is the only one that has not imposed a mental health sales tax, so this statute only applies to cities over 30,000 population in Pierce County.

PUBLIC SAFETY SALES TAX

Quick Summary

- Sales tax up to 0.1% – revenues are partially restricted; 1/3 must be used for criminal justice and/or fire protection.
- May be imposed by any city or town, but only if county has not previously imposed a 0.3% public safety sales tax.
- Revenue shared with county.
- Motor vehicle sales and first 36 months of motor vehicle leases are exempt.
- Requires voter approval.

RCW: [82.14.450](#)

Any city or town may impose a sales tax of up to 0.1% for public safety with voter approval ([RCW 82.14.450](#)). Motor vehicle sales and the first 36 months of motor vehicle leases are exempt. For instance, if the local sales tax rate is 8.7%, including a 0.1% public safety sales tax, the sales tax rate for motor vehicle sales and leases would be 8.6%.

Counties may also impose a public safety sales tax under the same statute, with a higher maximum rate of 0.3 percent. However, the combined city/county rate may not exceed 0.3 percent. For instance, if the county imposes a rate of 0.2% and the city imposes a rate of 0.1%, the total combined rate will be 0.3%. However, if the city imposed a 0.1% sales tax first and then the county imposes a 0.3% sales tax at a later date, the county must credit the 0.1% back to the city (effectively lowering the county's rate to 0.2% within the city) so it does not exceed the combined 0.3% rate. If the county already levies the full 0.3%, no city within the county may impose a new public safety sales tax because doing so would exceed the maximum 0.3% rate.

Use of Revenues

At least one-third of the revenue must be used solely for criminal justice purposes (as defined in [RCW 82.14.340](#)), fire protection purposes, or both. The statute does not provide a specific definition of “fire protection purposes,” but it defines “criminal justice purposes” as:

[A]ctivities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in [RCW 70.123.020](#)

The remaining two-thirds are unrestricted and may be used for any lawful governmental purpose, but must be spent in accordance with the purpose(s) specified in the ballot measure.

Ballot Measure Requirements

The sales tax may only be submitted at a primary or general election; it may *not* appear in any February or April special election. The ballot measure must clearly state the purposes for which the tax is to be used and must be approved by a simple majority of the voters. According to MRSC's [Local Ballot Measure Database](#), voters have approved the majority of these measures.

Revenue Sharing

The revenues must be shared between the city and the county, but the exact formula depends on which jurisdiction (city, county, or both) placed the issue on the ballot. The county retains 60% of any countywide public safety sales tax revenues, while the remaining 40% is distributed to the cities within the county on a per capita (population) basis. If a city imposes a public safety sales tax, the city retains 85% of the revenues and must share 15% of the revenue with the county.

In addition, the Department of Revenue retains 1% as an administrative fee. Below you will find examples of a few different scenarios to help demonstrate the revenue-sharing provisions.

Example #1. *City imposes public safety sales tax. City receives 85% of the revenue, with the remaining 15% distributed to the county.*

Total CITY sales tax revenues	\$100,000
City receives 85%	\$85,000
County receives 15%	\$15,000

Example #2. *County imposes public safety sales tax. County receives 60% of the revenue, with the remaining 40% distributed on a per capita basis to the cities within the county.*

Total COUNTYWIDE sales tax revenues	\$1,000,000
County receives 60%	\$600,000
Remainder for distribution	\$400,000

Jurisdiction	Population	Percent of Incorporated Population	Remaining Revenues Distributed (% population x \$400,000)
City A	10,000	25%	\$100,000
City B	22,000	55%	\$220,000
City C	8,000	20%	\$80,000
TOTAL	40,000	100%	\$400,000

Example #3. Both city and county have imposed a public safety sales tax. The same principles apply as above. The city keeps 85% of the city sales tax revenue, shares 15% with the county, and also receives a proportional share of the county's sales tax revenue based on population size. This example reflects a city imposing a 0.1% sales tax first and then the county imposing the maximum 0.3% sales tax later. The county must credit 0.1% back to the city so that the maximum rate is no greater than 0.3% within the city.

Total COUNTYWIDE sales tax revenues at 0.3%	\$1,000,000
Total "CITY A" sales tax revenues at 0.1% <i>Imposed prior to county sales tax; county must credit back to City A</i>	\$100,000
Revised COUNTYWIDE sales tax revenues	\$900,000
County receives 60%	\$540,000
Remaining COUNTYWIDE revenues for distribution	\$360,000

Jurisdiction	Population	Percent of Incorporated Population	Remaining COUNTYWIDE Revenues Distributed (% population x \$360,000)
City A	10,000	25%	\$90,000
City B	22,000	55%	\$198,000
City C	8,000	20%	\$72,000
TOTAL	40,000	100%	\$360,000

Total "CITY A" sales tax revenues	\$100,000
City A receives 85%	\$85,000
County receives 15%	\$15,000

"CITY A" GRAND TOTAL	City A receives \$175,000 (\$85,000 from city sales tax and \$90,000 from county sales tax)
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TRANSIT SALES TAX

Quick Summary

- Sales taxes up to 0.9% for transit and 1.0% for high-capacity transit – revenues are restricted and must be used for transit.
- Requires voter approval.

RCW: [82.14.045](#)

A city or town may levy a sales tax between 0.1 and 0.9% (in increments of 0.1%) for public transportation purposes ([RCW 82.14.045](#)). The measure requires voter approval.

Few cities provide transit service directly, so more commonly this sales tax authority is used by public transportation benefit areas (PTBAs) or other transit providers. A city may not impose this sales tax if it is located within a PTBA, county transportation authority, or metropolitan municipal corporation (King County Metro) that already imposes a sales tax under this statute.

As of 2019, MRSC's [Tax and Population Data](#) shows that the only cities to impose this sales tax are Everett, Selah, Union Gap, and Yakima.

Use of Revenues

The revenues must be used for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems or public transportation limited to persons with special needs under [RCW 36.57.130](#) and [RCW 36.57A.180](#).

Ballot Measure Requirements

The sales tax must be approved by a simple majority of voters. The statute does not specifically address when the sales tax may be presented to voters, which leads us to conclude that the ballot measure can be submitted at any special, primary, or general election. According to MRSC's [Local Ballot Measure Database](#), no cities or towns have submitted transit sales tax measures to voters in recent years.

Revenue Sharing

There are no revenue-sharing provisions. The city retains 100% of the revenues, minus a 1% administrative fee for the Department of Revenue.

High-Capacity Transit Sales Tax

Cities that provide transit service may also impose an additional sales tax up to 1.0% with voter approval for the purpose of providing high-capacity transit service operating principally on exclusive rights-of-way ([RCW 81.104.170](#)). However, this option is unlikely to apply to most cities, and as of 2019 the only transit agency in the state that has implemented a high-capacity transit sales tax is Sound Transit.

TRANSPORTATION BENEFIT DISTRICT SALES TAX

Quick Summary

- Sales tax up to 0.2% – revenues are restricted and must be used for transportation.
- May be imposed by any city or town that has established a transportation benefit district.
- Maximum duration of 10 years unless used for repayment of debt; may be renewed once.
- Requires voter approval.

RCW: [82.14.0455](#), [36.73.040\(3\)\(a\)](#), [36.73.065\(1\)](#)

Any city that has formed a transportation benefit district (TBD) may impose a sales tax up to 0.2% to fund TBD projects ([RCW 82.14.0455](#), [RCW 36.73.040\(3\)\(a\)](#), and [RCW 36.73.065\(1\)](#)). Unlike most sales tax options, the TBD sales tax is limited in duration. A successful ballot measure is only imposed for 10 years, with the ability to place this same sales tax option back before the voters for one additional 10-year period. A TBD sales tax may only exceed 10 years if it is used for the repayment of debt.

Use of Revenues

The revenues may be used for eligible “transportation improvements” listed in a local, regional, or state transportation plan in accordance with [chapter 36.73 RCW](#). Improvements can range from roads and transit service to sidewalks and transportation demand management. Construction, maintenance, and operation costs are eligible.

Ballot Measure Requirements

The sales tax must be approved by a simple majority of voters and may be placed on the ballot at any special, primary,³⁷ or general election ([RCW 36.73.065](#)). The proposition must include a specific description of the transportation improvement(s) proposed by the district and the proposed tax to be imposed. If the sales tax will be used for the repayment of debt in excess of 10 years, the ballot measure should state so and provide the length of the tax obligation.

According to MRSC’s [Local Ballot Measure Database](#), cities have submitted dozens of these measures in recent years, and voters have approved the vast majority of them.

Revenue Sharing

There are no revenue-sharing provisions. The TBD (or city, if the city has “assumed” the TBD under [chapter 36.74 RCW](#)) retains 100% of the revenues, minus a 1% administrative fee for the Department of Revenue.

³⁷ [RCW 36.73.065\(1\)](#) states that the tax must be submitted at “a general or special election,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

TIMING OF SALES TAX RECEIPTS

Most retailers remit their sales taxes to the Department of Revenue (DOR) on a monthly basis, with remittance due by the 25th of the following month.³⁸ The DOR distributes those collections, plus interest, to local governments on the last business day of the following month after subtracting a small administrative fee.³⁹

This means that for most purchases, there is somewhere between a 60-day to 90-day time lag between collection (the actual retail sale) and the city’s receipt of the sales tax revenue from that sale. For instance, if a sale is made in January – regardless of whether the sale took place on January 1 or January 31 – the sales tax is typically remitted to DOR by February 25, and DOR would then distribute the money (minus the administrative fee) to the city around March 31.

Local sales tax revenues are in DOR’s possession for approximately one month prior to distribution and accrue interest during that time. Interest earned on the funds collected is paid to the city under the provisions of [RCW 82.14.050](#).

TIMING OF SALES TAX RATE CHANGES

Increases in sales tax rates require some timing considerations. [RCW 82.14.055](#) provides that a local sales tax change may take effect no sooner than 75 calendar days after DOR receives notice of the change, and sales tax rate changes may only take effect on January 1, April 1, or July 1. (Note that sales tax rates no longer change on October 1.

Summary of Sales Tax Rate Change Deadlines

Sales tax takes effect	DOR must be notified no later than:	(For voted measures) Voters must approve no later than:
January 1	October 18	August primary election
April 1	January 16 (<i>January 17 during leap years</i>)	November general election
July 1	April 17	February special election

However, if a sales tax is a credit against the 6.5% state sales tax (such as the “basic” lodging tax discussed later in the *Revenue Guide*), it may take effect no sooner than 30 days after DOR receives notice, and only on the first day of a month.

Notifying DOR is a key step to ensure your city receives its sales tax revenues on time. Cities should submit copies of the sales tax ordinance (or ballot measure resolution) to Ashley Boss, DOR Tax Administration, at ashleyb@dor.wa.gov. For non-voted sales taxes, the sales tax ordinance should be submitted to DOR as soon as city council adopts it. For voted sales taxes, the ballot measure resolution should be submitted to DOR as soon as possible following certification of the election results.

For additional guidance, see [Key Considerations for Voted Revenue Sources](#).

³⁸ [RCW 82.32.045](#) and [WAC 458-20-22801](#). The Department of Revenue can waive tax remittance for persons with gross sales less than \$28,000 per year or make the administrative decision to put smaller taxpayers on an annual or quarterly payment schedule.

³⁹ [RCW 82.14.050 - .060](#)

MAXIMUM TAX RATE FOR SALES OF LODGING

In addition to the authorized sales taxes, state law also authorizes most cities, towns, and counties to impose an “additional” lodging tax of up to 2% on the sales of lodging (see [Lodging Tax \(Hotel/Motel Tax\)](#)). This lodging tax is treated as a sales tax, and under state law the maximum combined rate of all state and local sales and lodging taxes upon sales of lodging may not exceed the greater of 12% or the total sales tax rate that would have applied to the sale of lodging if the sale were made on December 1, 2000 ([RCW 82.14.410](#)). However, affordable housing sales taxes (see [RCW 67.28.181\(4\)](#)) and the first 0.4% of the Sound Transit high-capacity sales tax (adopted prior to December 1, 2000 – see [RCW 82.14.410\(2\)\(c\)](#)) are not included within this 12% cap.

Most jurisdictions are not that close to the 12% cap. However, any sales tax increase adopted after December 1, 2000 that would cause the total sales tax rate upon sales of lodging to exceed the 12% cap must provide an exemption for sales of lodging ([RCW 82.14.410](#)).

Business and Utility Taxes & Fees

Any city or town may impose a variety of taxes and fees upon local businesses and utility companies. The general authority for cities to impose business and occupation (B&O) taxes, utility taxes, and business licenses and fees can be found in:

- [RCW 35.22.280\(32\)](#) – **First class cities** may “grant licenses for any lawful purpose, to fix by ordinance the amount to be paid therefor, and to provide for revoking the same...”⁴⁰
- [RCW 35.23.440\(8\)](#) – **Second class cities** may “fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law...”
- [RCW 35.27.370\(9\)](#) – **Towns** may “license, for the purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town...”
- [RCW 35A.82.020](#) – **Code cities** may “exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity...”

Other statutes provide additional authority or restrictions as described in the rest of this chapter.

B&O taxes and utility taxes in particular are major revenue sources for a number of cities, and they comprise two of the four main revenue sources provided to cities by the state legislature (the other two being property taxes and sales taxes).

Business licenses are a separate but closely related topic. There are three general categories of business licenses: general licenses, regulatory licenses, and revenue-generating licenses. General business licenses and regulatory business licenses are typically designed to regulate business activity and recoup administrative costs. However, some cities have established revenue-generating business licenses (such as so-called “head taxes”) that are based on a variety of criteria such as number of employees, employee hours worked, or business square footage.

The remainder of this chapter will discuss the various options for B&O taxes, utility taxes, and business licenses.

⁴⁰ The statute for first class cities, unlike the other city classifications, does not specifically mention “revenue” purposes. However, the language for first class cities has been construed by the Washington Supreme Court as authorizing licenses for revenue purposes as well as regulation. The Court has in at least three decisions upheld a business and occupation tax under the above language: *Fleetwood v. Read*, 21 Wash. 547, 552-553 (1899); *Seattle v. King*, 74 Wash. 277, 279 (1913); and *Pacific Telephone and Telegraph v. Seattle*, 172 Wash. 649, 653 (1933).

BUSINESS AND OCCUPATION (B&O) TAXES

Quick Summary

- Cities may impose a B&O tax for revenue purposes upon those conducting business within their jurisdiction, in addition to any state business and occupation tax.
- Revenues are unrestricted and may be used for any lawful governmental purpose.
- Rates must be the same within a single business class (manufacturing, retail, etc.) but may vary between classes.
- Rates may not exceed 0.2% of gross receipts unless grandfathered in or approved by voters.
- Imposition of tax does not require voter approval, but may be subject to referendum.

RCW: [35.21.710](#) and other statutes

Any city or town may impose general business and occupation (B&O) taxes on local businesses, which are levied as a percentage of the businesses' gross receipts, less some deductions.⁴¹ As of 2019, 46 of Washington's 281 cities levy this tax.

Utility businesses have separate provisions (see [Utility Taxes](#)) and are exempt from the general B&O tax provisions ([RCW 35.102.020](#)).

B&O taxes are imposed by the legislative body and do not require voter approval unless the rate exceeds 0.2% of gross receipts or gross income. However, all ordinances that impose a B&O tax for the first time or raise rates must provide for a referendum procedure using the procedures in [RCW 35.21.706](#), regardless of whether or not the city has otherwise adopted powers of initiative and referendum.

Business and occupation taxes tend to be unpopular with businesses, whether because the B&O tax is based upon their gross receipts rather than net profits or because it is another tax imposed upon local businesses. Local businesses must decide whether to pass along this tax to the consumer in the form of higher prices, which can raise concerns over competitive pricing for smaller businesses. On the opposite side of this discussion is the fact that the B&O tax helps fund general governmental services that benefit local businesses, such as police and fire.

Maximum Tax Rates

The B&O tax may not exceed 0.2% (0.002) of gross receipts or gross income ([RCW 35.21.710](#)) unless approved by voters ([RCW 35.21.711](#)).⁴² However, the law grandfathered in those cities that had a B&O tax rate greater than 0.2% on January 1, 1982 and allows those cities to increase their rate without voter approval. The increase is limited to a total of 10% of the January 1982 rate, with an annual incremental increase limited to 2% of the current rate.⁴³ Businesses are put in different classes such as manufacturing, wholesaling, retailing, and services. Within each class, the rate must be the same, but it may differ between classes.

41 The statutory authority for B&O taxes is found in the same places as that for general business licenses.

42 As of 2019, Seattle is the only city with a voter-approved B&O tax higher than 0.2%.

43 The cities that are grandfathered in at a higher rate than 0.2% are: Aberdeen, Bellingham, Tacoma, and Westport.

Cities thinking of levying a local B&O tax should consider whether they have the staff time and expertise necessary to administer this tax. Establishing a B&O tax system requires routine audits by city staff to ensure compliance with the regulations and proper collection of B&O tax income.

Model Ordinance Provisions

In 2003, the legislature passed a bill that required the Association of Washington Cities (AWC) to convene a committee to develop a model ordinance that must be adopted by all cities imposing a B&O tax. The legislature was concerned about the lack of uniformity of city B&O tax ordinances and about the possibility that some business income was subject to multiple taxation.

The model ordinance, which had to be adopted by all cities with an existing B&O tax no later than December 31, 2004, exempted gross receipts under \$20,000 per year and provided certain mandatory definitions, penalty and interest provisions, and payment periods. The model ordinance cannot be updated more often than every four years and was last updated in 2019.

Cities that levy the B&O tax must allow for allocation and apportionment – meaning that they must allow businesses that operate within multiple jurisdictions to apportion, or divide, their taxable income among the jurisdictions in which they do business. (See [RCW 35.102.130](#).) In 2019, the model ordinance was updated to simplify the current two-factor method of allocation and apportionment.

Some of the model ordinance provisions are mandatory, while others are non-mandatory ([RCW 35.102.040](#)). Any city that adopts an ordinance that deviates from the non-mandatory provisions of the model ordinance must make a description of such differences available to the public, in written and electronic form ([RCW 35.102.040\(4\)](#)).

For the latest information on the model B&O tax ordinance and apportionment provisions, refer to the AWC website and MRSC's [City Business and Occupation Tax](#) webpage.

Use of Revenues

B&O tax revenues are unrestricted and may be used for any lawful governmental purpose.

UTILITY TAXES

Quick Summary

- Any city may impose a tax on the income of utility companies.
- Revenues are unrestricted and may be used for any lawful governmental purpose.
- Maximum tax rate may not exceed 6% for electric, gas, steam, and telephone services unless approved by voters.
- No limitation on the tax rate for water, sewer, solid waste, or stormwater utilities.
- Internet and satellite TV may not be taxed; cable TV has special provisions.

RCW: 35.21.870 and other statutes

Any city or town may impose a business and occupation tax upon the income (as defined by local ordinance) of public and private utilities providing services within the boundaries of a city, and/or upon the city's own municipal utilities (referred to as a "utility tax"). The statutory authority for the utility tax is found in the same places as that for general business licenses and B&O taxes (see [Business and Utility Taxes & Fees](#)). Cities and towns are also authorized by statute to impose utility taxes upon public utility districts (PUDs) that operate works, plants, or facilities within the city or town for the sale of electricity ([RCW 54.28.070](#)).⁴⁴

A city may also levy taxes on revenues earned by the city's utility services provided both inside and outside the city limits.⁴⁵ The utilities that may be taxed include electricity, water, sewer, solid waste, stormwater, gas, telephone, cable TV, and steam.

A city that imposes a utility tax for the first time or that increases a tax rate may be required to include a referendum clause in the ordinance, regardless of whether the city has otherwise adopted powers of initiative and referendum. The basic authority for the utility tax is located within the general B&O tax authority ([RCW 35.21.706](#)), which requires an ordinance imposing or increasing the city's B&O tax to provide for a referendum procedure. Although it is unclear whether [RCW 35.21.706](#) applies to utility tax ordinances, MRSC has a long history of providing conservative guidance, so until a court decision or legislative amendment clarifies this issue, we recommend including referendum language in the ordinance. However, several cities have not included a referendum clause.



Practice Tip: A utility tax is imposed upon the utility itself and not upon the individual utility customers. Utilities will often break out the amount of the utility tax on a customer's bill, which frequently generates confusion and can cause miscalculation of the utility tax. Cities must be mindful of this subtle but important difference.

⁴⁴ Based on a 2014 court of appeals decision, it appears that cities and towns may also impose utility taxes upon the proprietary activities of other municipalities that provide utility service within the city's boundaries. See *City of Wenatchee v. Chelan Public Utility District No. 1*, 181 Wn. App. 326 (2014). This decision concerned a code city in particular, but the court's reasoning could apply equally to other classes of cities and towns.

⁴⁵ See *Burba v. Vancouver*, 113 Wn.2d 800 (1989). Court upheld utility tax imposed by the city on its water and sewer utility where the measure of the tax was gross revenues derived by the utility from providing service to both resident and nonresident customers. Also see *Burns v. City of Seattle*, 161 Wn.2d 129 (2007) ("the Cities could have generated revenue for their general funds through the imposition of a utility tax on their own municipal utilities").

Allowable Utility Tax Rates

There are no restrictions on the tax rates for water, sewer, solid waste, and stormwater utilities. The tax rate for electric, gas, steam, and telephone utilities may not exceed 6% without voter approval ([RCW 35.21.870](#)). The city may ask voters to approve a rate higher than 6% for these utilities, as described later in this section. As of 2019, we are aware of nine cities that have passed a voted utility tax greater than 6% on these statutorily regulated utilities.⁴⁶ For brokered natural gas, there is an equivalent “use tax” provision (see [Brokered Natural Gas Use Tax](#)).

Cell phone and pager services may be taxed at the same rate as other telephone services.⁴⁷ However, with cell phone services a city must take care within its ordinance not to tax Internet services. The federal Internet Tax Freedom Act Amendments Act of 2007, Public Law 110-108, prohibits the imposition of state and local taxes on Internet services.

The rate on cable TV is governed by the Cable Communications Policy Act of 1984 (Telecommunications Act of 1996, §602(a) ((47 U.S.C. §522(a))), which simply requires that the rate not be “unduly discriminatory against cable operators and subscribers.” If a city has set all its tax rates at 6%, the rate on cable TV should probably be no higher than that. However, if rates on utilities other than electric, gas, or telephone are higher than 6%, an argument can be made that the tax on cable TV can be higher than six percent without being “unduly discriminatory,” because all the rates over which the jurisdiction’s legislative body has control are higher than six percent. However, direct broadcast satellite television services are preempted from all local government taxation except for the sales of equipment, such as satellite reception dishes.

The table below provides a summary of allowable utility tax rates:

Type of Utility	Maximum Utility Tax Rate
Broadcast Satellite TV	May not be taxed
Cable TV	Not “unduly discriminatory”
Electricity	6% *
Internet	May not be taxed
Natural Gas	6% *
Sewer	No limit
Solid Waste	No limit
Steam	6% *
Stormwater	No limit
Telephone (including cell phone and pager)	6% *
Water	No limit

**Unless higher rate is approved by voters*

Use of Revenues

⁴⁶ The cities we are aware of are: Cheney, Federal Way, Grandview, Kennewick, Pasco, Pullman, Richland, Tacoma, and Toppenish. Utility tax revenues are unrestricted and may be used for any lawful governmental purpose. However, if the city is submitting a utility tax increase ballot measure to voters, specifying a purpose might make voters more likely to approve it.

⁴⁷ In *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599 (2000), the Washington State Supreme Court found that one-way paging services fall within the statutory definition of “telephone business.” If the city does specify a purpose in the ballot measure, the extra revenues resulting from the

increase would be considered restricted and must be spent in accordance with the purpose stated in the ballot measure.

Ballot Measure Requirements to Increase Utility Tax Above 6%

To increase the utility tax above 6% for electric, gas, steam, or telephone utilities, the city must submit a ballot measure which must be approved by a simple majority of voters. The statute does not specifically address when the utility tax must be presented to voters, which leads us to conclude that the ballot measure can be presented to the voters at any special, primary, or general election.

As noted earlier, a number of cities have successfully approved utility tax increases above 6%. However, according to MRSC's [Local Ballot Measure Database](#), most attempts have been unsuccessful in recent years.

Timing of Rate Changes

Any tax changes for electric, telephone, and gas utilities cannot take effect until the end of 60 days after enactment of the ordinance ([RCW 35.21.865](#)). If the utilities are private utilities, they need this time to apply to the Washington Utilities and Transportation Commission for a rate adjustment to reflect the tax change.

BROKERED NATURAL GAS USE TAX

Quick Summary

- Any city that has a natural gas utility tax may impose an equivalent “use tax” upon brokered natural gas sales that are otherwise not subject to the utility tax.
- Use tax rate must be equal to the natural gas utility tax rate.
- Revenues are unrestricted and may be used for any lawful governmental purpose.

RCW: [82.14.230](#)

In 1986, the federal government deregulated the natural gas industry, allowing large customers to bypass gas utilities and bargain directly with independent brokers. Some of these sales were no longer taxable under existing state statute, which resulted in some cities losing a considerable amount of revenue.

In response, the state legislature enacted [RCW 82.14.230](#), which allows cities that tax natural gas to (optionally) impose an equivalent “use tax” on brokered natural gas sales that are not otherwise subject to the utility tax. The use tax is imposed by the legislative body and does not require voter approval.

The use tax rate must be equal to the city’s utility tax rate on natural gas. For instance, if the city imposes a 5% utility tax on natural gas, it must impose a 5% use tax on brokered natural gas. If a city has imposed an 8% utility tax on natural gas with voter approval, it must impose an 8% use tax on brokered natural gas.

This tax only applies to brokered natural gas sales that are not otherwise subject to the utility tax, and the use tax must be paid by the consumer. However, the use tax does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas if the consumer uses the gas for transportation fuel as defined in [RCW 82.16.310](#).

The brokered natural gas use tax statute was amended in 2010 to define “use” as “the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer’s own facilities for later consumption by the taxpayer” (see [RCW 82.12.010\(6\)\(h\)](#)). In other words, the use or taxable event occurs wherever the customer consumes the gas or stores it for later consumption.

Use of Revenues

As with utility taxes, all revenues from the brokered natural gas use tax are unrestricted and may be used for any lawful governmental purpose.

Timing of Receipts

Cities must contract with the state Department of Revenue to collect brokered natural gas use taxes. The state distributes the revenue to participating cities at the end of every month.

GENERAL BUSINESS LICENSE FEES

Quick Summary

- Cities may require individuals or businesses conducting business within their jurisdiction to obtain a local business license.
- Revenues are used to recoup administrative costs.

RCW: 35.22.280(32) – First class cities

35.23.440(8) – Second class cities

35A.82.020 – Code cities

35.27.370(9) – Towns

Most individuals or companies that conduct business in Washington State must obtain a state business license from the Business Licensing Service (BLS), a division of the State Department of Revenue.

In addition to a state business license, most cities require an additional city business license to legally conduct business within their jurisdiction. These city business licenses can serve several different functions, including monitoring business operations within the city's jurisdiction, regulating certain types of business activities to ensure public safety, and generating revenue.

A general business license, as defined in [RCW 35.90.010\(4\)](#), is “a license, not including a regulatory license or a temporary license, that a city requires all or most businesses to obtain to conduct business within that city.” Most cities charge a fee for such licenses, as described below.

Any city may require a general business license for any person or company “engaging in business” within its boundaries. This includes businesses that are physically located within the city, as well as businesses that are physically located elsewhere but engage in business within the city. However, cities may *not* require licenses for entities that are not engaging in business within the jurisdiction ([RCW 35.90.060](#)).

Model Ordinance Provisions

Businesses that operate in multiple cities need to obtain separate licenses from each city that requires a business license. In response to business complaints that this process is too burdensome, in 2017 the state legislature adopted legislation to simplify the administration of city general business licenses.

The legislation, codified at [chapter 35.90 RCW](#), requires all cities and towns with general business license requirements to adopt a uniform “model ordinance” identifying what types of commercial activity are and are not subject to business licensing requirements. However, it should be noted that this is not a comprehensive model ordinance – rather, it consists of just two provisions that must be incorporated into the rest of the city's business licensing regulations:

1. The model ordinance includes a uniform definition of “engaging in business within the city,” including examples of activities that are considered “engaging in business” as well as business activities that do not require licensing. This definition is based on the model ordinance for B&O taxes.

2. For businesses that “engage in business” within the city but at not physically located within the city, the city must establish a minimum dollar threshold below which the businesses must be partially or fully exempted from licensing requirements. The minimum threshold of business activity in the model ordinance is \$2,000 per year, but some cities have adopted a higher threshold. Below this threshold, cities may either require a business license at no cost to the business (a \$0 fee), or alternatively they may exempt those businesses from the general business license requirements entirely.

Aside from the model ordinance provisions, cities and towns may adopt any other business license provisions that they see fit, including, but not limited to:

- Fees and thresholds (provided that they comply with the model ordinance)
- Approval process and conditions
- License terms and expiration dates
- Penalties
- Suspension, revocation, and appeals
- Exemptions (again, provided that they comply with the model ordinance)

While many cities currently issue their business licenses directly, [chapter 35.90 RCW](#) requires all cities to partner with either the state BLS by December 31, 2022 or FileLocal (a business license and B&O tax service created by interlocal agreement between several larger cities in the Puget Sound region) by July 1, 2020.

By the end of 2022, all cities will be enrolled in BLS or FileLocal and businesses will be able to obtain local business licenses for any city in the state through these two registration portals. Cities will still retain the ability to set their own general business license fees, business exceptions, and/or exemptions with either BLS or FileLocal, and they will also be able to set thresholds higher than the model ordinance provisions if desired.

For more information, including examples of local business license ordinances and fee schedules and the complete text of the model business license, see our [City Business Licenses and Fees webpage](#).

Use of Revenues

General business license fees are generally designed to recover the administrative costs of registering the businesses, such as issuing the licenses and maintaining the files. Cities may charge a flat or tiered fee for general business licenses, but the fees charged should be fair and bear a reasonable relation to the costs.⁴⁸ However, some cities charge variable fees designed to generate revenues (see [Revenue-Generating Business License Fees \(“Head Taxes”\)](#)).

⁴⁸ See McQuillin, *Municipal Corporations* §26.46 (July 2018); see, generally, *Patton v. Bellingham*, 179 Wash. 566 (1934), and *Homes Unlimited v. Seattle*, 90 Wn.2d 154 (1978).

REGULATORY BUSINESS LICENSE FEES

Quick Summary

- Cities may require certain classes of business that need additional regulation and oversight to obtain an additional regulatory business license, in addition to the general business license.
- Revenues are intended to recoup administrative costs.

RCW: 35.22.280(32) – First class cities

35.23.440(8) – Second class cities

35A.82.020 – Code cities

35.27.370(9) – Towns

Some cities also impose additional regulatory licenses and fees upon certain classes of business that, in their analysis, require additional regulation and oversight for code enforcement or public safety purposes.

[RCW 35.90.010\(6\)](#) defines a “regulatory business license” as “a license, other than a general business license, required for certain types of businesses that a city has determined warrants additional regulation...”

Examples include, but are not limited to: adult entertainment, fireworks stands, home-based businesses, marijuana-based businesses, massage parlors, mobile food vendors, and short-term rentals. For examples and more information, see our [City Business Licenses and Fees webpage](#).

Use of Revenues

As with general business licenses, regulatory business license fees are generally designed to recover administrative costs and should be fair and bear a reasonable relation to the costs. However, the fees may be higher than the fees for general business licenses due to added regulatory costs such as inspections and code compliance.

REVENUE-GENERATING BUSINESS LICENSE FEES (“HEAD TAXES”)

Quick Summary

- Some cities impose business license fees on a sliding scale to generate revenue.
- Revenues are unrestricted and may be used for any lawful governmental purpose.
- Fees may be based on number of employees, type of business, square footage, and other criteria.

RCW 35.22.280(32) – First class cities

35.23.440(8) – Second class cities

35A.82.020 – Code cities

35.27.370(9) – Towns

Instead of recouping administrative costs, some cities generate revenue by charging business license fees on a variable scale. The fees are based on one or more criteria such as the number of employees or number of employee hours worked (sometimes referred to as a “head tax,” although it is actually a fee rather than a tax), the type of business, or the square footage of a business. Sometimes the fees are based on a true sliding scale, while other times the fees are broken into multiple tiers.

The law allows for a good deal of creativity in designing these license fees. However, classes of businesses must be clearly defined, and each business within each class must be charged the same fee.⁴⁹ For examples and more information, see our [City Business Licenses and Fees webpage](#).

The fee may be imposed by the legislative body and does not require voter approval. However, if the city has adopted powers of initiative and referendum, it may be subject to a voter referendum.

Use of Revenues

The revenues from a revenue-generating business license fee are unrestricted and may be used for any lawful governmental purpose.

49 See McQuillin, *Municipal Corporations* §26.76 (July 2018).

Lodging Tax (Hotel/Motel Tax)

Quick Summary

- Most cities or towns may impose a lodging tax up to 4%, of which:
 - 2% is a credit against the state sales tax.
 - 2% is in addition to the sales tax rate.
- A few jurisdictions have been grandfathered in with varying rates.
- Revenues are restricted and must generally be used for tourism activities or tourism-related facilities.
- May also be used to repay debt for affordable workforce housing within ½ mile of a transit station.
- Cities of 5,000 or more must establish a lodging tax advisory committee (LTAC) to review funding applications and recommend awards.
- Does not require voter approval.

RCW: [67.28.180](#) and [67.28.181\(1\)](#)

Any city or town has the authority to levy lodging taxes, also known as “hotel/motel taxes,” on all charges for furnishing lodging at hotels, motels, and short-term rentals (STR), including such activities as Airbnb, bed and breakfasts (B&Bs), RV parks, and other housing and lodging accommodations for periods of time less than 30 days. The tax is collected as a sales tax and paid by the customer at the time of the transaction. These taxes may be imposed by the legislative body and do not require voter approval.

In addition, counties and certain public facilities districts also have lodging tax authority.

There are two lodging tax options:

- A “**basic**” or “**state-shared**” lodging tax up to 2% that is taken as a credit against the 6.5% state sales tax rate, so that the lodging patron does not see any tax increase.
- An “**additional**” or “**special**” lodging tax up to 2% on top of the state sales tax rate that results in a higher tax bill for the patron.

If a city imposes both options at the maximum rate, that would bring the total local lodging tax rate to 4%. Both the “basic” and the “additional” lodging taxes will be discussed further in the following pages, along with the use and distribution of funds, lodging tax advisory committees (LTACs), and reporting requirements.

Lodging taxes are different than tourism promotion area fees (see [Tourism Promotion Area Fees](#)), and lodging taxes may be imposed in addition to tourism promotion area fees.

“BASIC” OR “STATE-SHARED” LODGING TAX

Most cities and towns have the authority to levy a “basic” or “state-shared” lodging tax up to 2% ([RCW 67.28.180](#)), which is taken as a credit against the 6.5% state sales tax ([RCW 67.28.1801](#)) so that there is no tax increase and the total tax paid by the patron is equal to the retail sales tax in the jurisdiction in which the lodging is located. The state’s portion of the sales tax rate on lodging effectively drops from 6.5% to 4.5% within those jurisdictions.

Counties have similar “basic” lodging tax authority. The city’s basic rate is credited against the county’s basic rate ([RCW 67.28.180\(2\)](#)). For instance, if both the city and the county impose the full 2% basic lodging tax, the total rate will be 2% countywide, but the county will not receive revenues from the incorporated area because it must credit those revenues back to the city.

The basic lodging tax has a few exceptions:

- No city located within King County may impose the basic lodging tax (see [RCW 67.28.180\(2\)\(c\)\(ii\)](#)), except for Bellevue which has legislation allowing it to collect a rate up to 2% until its related debt is retired (subsection (2)(c)(iii)).
- No city that is located within a county that is exempt under [RCW 67.28.180\(2\)\(b\)](#) may impose the basic lodging tax so long as the county remains exempt. As of 2018, Yakima County is the only county exempt under that subsection, so no city within Yakima County may impose this tax. However, there is also an exception that grandfathers in the City of Yakima and allows it to collect a basic lodging tax up to 2% until its related debt is retired (subsection (2)(c)(iii)).
- For Bellevue/King County and City of Yakima/Yakima County, the statutory exemptions allow the jurisdictions to “double-dip,” meaning that the city lodging tax is not taken as a credit against the county rate. Instead, the city and county rates are added together, resulting in a credit of up to 4% against the state sales tax rate within Bellevue and the City of Yakima. This means the state only receives a 2.5% sales tax on lodging in those two cities.

“ADDITIONAL” OR “SPECIAL” LODGING TAX

In addition to the “basic” 2% lodging tax, most cities may impose an “additional” or “special” lodging tax up to 2% in increments no smaller than 0.1% ([RCW 67.28.181\(1\)](#)). Unlike the “basic” lodging tax, which is taken as a credit against the 6.5% state sales tax, the “additional” lodging tax is *not* a credit and results in a tax increase for the lodging patron. If the basic and additional lodging tax are each levied at a rate of 2%, the combined lodging tax rate would be 4%, and the total tax paid by the patron would be equal to the retail sales tax in the jurisdiction plus the additional/special lodging tax of 2%.

Counties also have similar authority, and if the county has imposed the “additional” lodging tax, the city’s additional lodging tax must be taken as a credit against the county’s additional rate ([RCW 67.28.181\(3\)](#)). For example, if both the city and the county impose the full 2% “additional” lodging tax, the total additional rate will be 2% countywide, but the county will not receive revenues from the incorporated area because it must credit those revenues back to the city.

The additional lodging tax option has a few exceptions:

- Counties and cities that imposed a combined lodging tax greater than 4% before July 27, 1997 were grandfathered in under [RCW 67.28.181\(2\)\(a\)](#). This includes Grays Harbor and Pierce counties (and the cities within them), plus the cities of Airway Heights, Bellevue, Chelan, Leavenworth, Long Beach, Winthrop, and Yakima.
- Any city located within a county that had the authority to levy a countywide 4% lodging tax before January 1, 1997 may not impose the additional 2% ([RCW 67.28.181\(2\)\(b\)](#)). This applies to all cities in Cowlitz and Snohomish counties.
- Cities that imposed a combined lodging tax rate of 6% before January 1, 1998 are grandfathered in under [RCW 67.28.181\(2\)\(d\)](#). This occurred due to a unique set of circumstances and only applies to the cities of Wenatchee and East Wenatchee.

The maximum combined sales and lodging tax rate upon sales of lodging may not exceed 12% ([RCW 67.28.181\(1\)](#)).⁵⁰ The statutes included within the 12% cap are [chapter 36.100 RCW](#) (public facilities districts), [chapter 82.08 RCW](#) (state sales tax), [chapter 82.14 RCW](#) (local sales taxes), [chapter 67.28 RCW](#) (lodging taxes), and [chapter 67.40 RCW](#) (convention and trade center tax – repealed in 2010). However, affordable housing sales taxes (see [RCW 67.28.181\(4\)](#)) and the first 0.4% of the Sound Transit high-capacity sales tax (adopted prior to December 1, 2000 – see [RCW 82.14.410\(2\)\(c\)](#)) are not included within the 12% cap.

Most cities are not that close to the 12% cap, and the cap does not affect the ability of any cities to impose the maximum “basic” lodging tax allowed by law since it is taken as a credit against the state sales tax and does not increase the sales tax rate. However, the 12% cap may limit the “additional” lodging tax rate that some cities, particularly within King County, may impose. [RCW 82.14.410](#) provides that any local sales and use tax increase adopted after December 1, 2000 must exempt lodging sales if the increase would cause the total combined lodging/sales tax rate to exceed the greater of the 12% cap or the actual combined lodging/sales tax rate in effect on December 1, 2000.

⁵⁰ There is an exception for Seattle, where the convention center lodging tax is higher. The city may impose an “additional” lodging tax up to 4%, and the combined lodging and sales tax rate may not exceed 15.2% under [RCW 67.28.181\(2\)\(c\)](#).

LODGING TAX ADVISORY COMMITTEES AND USE OF FUNDS

Lodging tax revenues are unlike most other local revenue sources in that many cities do not have complete control over how the revenues are spent. The money can be awarded to nonprofits, tourism organizations, and to the city or county for those activities associated with tourism facilities and tourism promotion. All prospective lodging tax recipients must apply for funding.

Any city with a population of 5,000 or more that has imposed lodging taxes – either the basic/state-shared or the additional/special taxes – must establish a lodging tax advisory committee (LTAC) comprised primarily of representatives of the local lodging and tourism industries. All prospective funding recipients must apply to the LTAC for consideration. The LTAC will review the applications and make funding recommendations to the city legislative body for consideration.

Cities with a population of less than 5,000 are not required to establish an LTAC, although they may do so if desired. If the city does not have an LTAC, prospective applicants must apply directly to the city legislative body for consideration and funding. This section will discuss the use of revenues and the LTAC award process.

Use of Revenues

All lodging tax revenues – including both the “basic” and “additional” lodging taxes – must be used for tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities ([RCW 67.28.1815](#) and [RCW 67.28.1816](#)), including:

- Tourism marketing;
- Marketing and operations of special events and festivals designed to attract tourists;
- Operations *and* capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district; or
- Operations of tourism-related facilities owned or operated by nonprofit organizations (but *not* capital expenditures).

Cities and towns may use the funds either directly, or indirectly through a convention and visitor’s bureau or destination marketing organization. [Chapter 67.28 RCW](#) demonstrates that it was the state legislative intent to provide local control over the use of lodging tax revenues and to provide for the distribution of this tax back to those organizations and agencies that promote tourism within the city.

Definitions are provided in [RCW 67.28.080](#). Of particular note are the following definitions:

“Tourism promotion” means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

“Tourism-related facility” means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.



Practice Tip: The guiding principle is that these facilities should be used by tourists. So, for example, a municipal golf course would likely be a permitted lodging tax expenditure in Chelan, while it probably would not be if it were in a residential neighborhood in Spokane. Each situation is unique and requires careful assessment.

After conferring with the State Auditor’s Office, we have also concluded that lodging tax revenues may be used to pay for staff support of the lodging tax advisory committee (LTAC), provided that proper application and reporting requirements are followed. Our conclusion comes from [RCW 67.28.1815](#), which states that the revenues must be used “solely for the purpose of paying all or any part of the cost of tourism promotion...” It is our opinion that the primary function of an LTAC is to promote and market tourism.

To avoid any concerns with Article 8, Section 7 of the state constitution, which prohibits gifts of public funds, a city should enter into a contract with any organization receiving lodging tax funds. The contract should spell out the tourism-related services to be provided in exchange for city funding as well as the required reports that must be filed by the recipient with the city that quantifies the services in terms of the number of tourists generated as a result of the funding.

Cities and counties may use lodging tax funds to repay debt associated with tourism related facilities owned by the municipality, and the 2015 legislation session provided cities with an additional option to use lodging tax revenues to repay general obligation bonds ([RCW 67.28.150](#)) or revenue bonds ([RCW 67.28.160](#)) issued for affordable workforce housing within a half mile of a transit station ([RCW 67.28.180](#)).

King County has a separate mandatory provision that requires at least 75% of the revenues to be used for affordable housing and the arts beginning in 2021. However, these provisions only apply to the county itself and do not apply to any cities within King County.

Application and Award Process

The entities that may apply for lodging tax funding are:

- Convention and visitors’ bureaus;
- Destination marketing organizations;
- Nonprofits, including main street organizations, lodging associations, or chambers of commerce; and
- Municipalities (defined as any city, town, or county).

In cities with a population of 5,000 or more, applications for lodging tax funding must be submitted to a lodging tax advisory committee (LTAC). The LTAC must be appointed by the city council and must contain at least five members, including one elected city official who serves as chair, at least two representatives of businesses that are required to collect the lodging tax, and at least two people who are involved in activities that are authorized to be funded by the lodging tax ([RCW 67.28.1817](#)). The city may optionally appoint one county elected official as a nonvoting member. The city council must review the committee’s membership annually and makes changes as appropriate.

In cities of less than 5,000, applications are submitted to the city legislative body, unless the city voluntarily chooses to establish an LTAC.



Practice Tip: Cities with a population less than 5,000 that voluntarily establish an LTAC do not have to follow the statutory requirements outlined in [RCW 67.28.1816](#) and [.1817](#). If your city chooses to vary from the statutory requirements, it should adopt policies to provide clear direction and guidance.

All applications must include estimates of how funding the activity will result in increases to the number of people staying overnight, travelling 50 miles or more, or coming from another state or country. To ensure that the applicants are compliant with this statutory requirement, this information should be included in the lodging tax application form that will be filed with the city or the LTAC.

There is no requirement that priority for funding be given to applicants expected to generate the largest number of tourists, and lodging tax revenue may still be awarded to recipients who provide services that indirectly increase tourism such as destination marketing organizations.



Practice Tip: The State Auditor's Office interprets the law to mean that all users of lodging tax funds, including municipalities, are considered applicants and must follow the relevant application procedures. So, cities should submit applications for their own projects to the LTAC.

For those cities required to establish an LTAC, the LTAC receives all applications for lodging tax revenue and recommends a list of candidates and funding levels to city council for final determination. The statute says that city council “may choose *only recipients* from the list of candidates and recommended amounts provided by the local lodging tax advisory committee” ([RCW 67.28.1816\(2\)\(b\)\(ii\)](#), emphasis added). The city council may not award funds to any recipient that was not recommended by LTAC.

However, an [informal opinion from the Attorney General's Office](#) in 2016 states that the legislative body may award amounts different from the LTAC's recommended amounts, but only after satisfying the procedural requirements of [RCW 67.28.1817\(2\)](#). This requires the municipality to submit its proposed change(s) to the LTAC for review and comment at least forty-five days before final action is taken.

The city is not required to fund the full list of recommended recipients and may choose to make awards to only some or even none of the recommended recipients.

The law is silent on the frequency of the awards. Some jurisdictions choose to make the award process a part of their annual budget cycle while others may incorporate a mid-year awards procedure to account for unexpected increases or decreases in lodging tax revenues.

Rate Changes and Exemptions

For those cities required to establish an LTAC, any proposal to impose a new lodging tax, raise the rate of an existing tax, repeal an exemption from the lodging tax, or change the use of the tax proceeds, must be submitted to the lodging tax advisory committee for review and comment ([RCW 67.28.1817\(2\)](#)).

This submission must occur at least 45 days before final action will be taken on the city council's proposal. Even if the committee finishes its work before the 45 days are up, the city council still must wait 45 days.

The committee's comments must include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and of the extent to which it will affect the long-run stability of the fund to which the hotel-motel taxes are credited. If the advisory committee does not submit comments within the 45-day deadline, city council may proceed with final action.

REPORTING REQUIREMENTS

All cities and towns *receiving* lodging tax revenues must report annually to the Joint Legislative Audit & Review Committee (JLARC) ([RCW 67.28.1816](#)). JLARC has established an [online reporting system](#), and the reporting requirements include:

- All lodging tax revenues received;
- All lodging tax revenues distributed and/or expended;
- All recipients of lodging tax monies, including the city itself, that may have directly used lodging tax funds for qualifying facilities, tourist events, or tourism administration; and
- For all recipients, the actual number of people traveling for business or pleasure on an overnight trip in paid accommodations, traveling 50 or more miles away from their business or place of residence for the day or overnight, or traveling from another country or state.



Practice Tip: The deadline for local governments to submit the annual lodging tax data to JLARC is May 15 for the year ending December 31 of the prior fiscal period. However, the JLARC online filing system can record and store lodging tax activity throughout the calendar year, so as part of your contract with recipients, we recommend that you require the recipient to file the actual number of attendees, overnight stays, and/or other associated tourism data as soon as the event or activity has been completed to assure the city's full compliance with JLARC.

In the event that your city received lodging tax revenues but did not have any distributions or expenses during the calendar year, the JLARC report must still be completed and filed by the deadline indicating no activity.

Real Estate Excise Taxes (REET)

The State of Washington levies a real estate excise tax (REET) upon all sales of real estate under [chapter 82.45 RCW](#). The tax rate used to be a flat 1.28%, but effective January 1, 2020 the state implemented a graduated tax scale based on the selling price of the property, with the sale price thresholds adjusted on a four-year schedule (see [RCW 82.45.060](#)). However, the sale of real property classified as timberland or agricultural land remains taxed at a flat 1.28% regardless of the sale price.

A portion of the proceeds are deposited into the public works assistance account ([RCW 43.155.050](#)) for loans and grants to local government for public works projects; the city-county assistance account (see [City-County Assistance \(ESSB 6050\) Distributions](#)) for distribution to qualifying cities and counties; and the education legacy trust account for the support of the common schools, expanding higher education, and other educational improvement efforts.

In addition, [chapter 82.46 RCW](#) authorizes cities and towns to impose local real estate taxes on top of the state rate. The tax is calculated based on the full selling price, including the amount of any liens, mortgages, and other debts given to secure the purchase ([RCW 82.46.010\(5\)](#) and [RCW 82.45.030](#)). However, the rate that the city can levy and the way it can use the revenues depends on the city's population and whether or not it is planning under the Growth Management Act (GMA).

The tax is due at the time of sale and is collected by the county when the documents of sale are presented for recording ([WAC 458-61A-301](#)). Real estate excise taxes are typically the responsibility of the seller of the property, not the buyer, although the buyer is liable if the tax is not paid. However, sometimes the buyer pays some or all of the tax as part of the negotiated sale agreement.

Some real estate property transfers are exempt from REET under [chapter 458-61A WAC](#). For instance, gifts of real property are generally exempt from REET ([WAC 458-61A-201](#)), as are transfers of property through wills or inheritance ([WAC 458-61A-202](#)) and transfers due to divorce settlement agreements ([WAC 458-61A-203](#)).

Any property sold by a government agency is exempt from REET, but generally any real property purchased by a government agency is subject to REET unless otherwise exempted ([WAC 458-61A-205](#)).

REET revenues can be somewhat volatile, since they depend on both the volume of real estate sales and the sale value of the properties sold. If the local real estate market is strong, tax revenues will be strong too. But if the local real estate market is weak, tax revenues will decline in direct proportion to the activity in the market.

The two main REET options for cities and towns are:

- **REET 1 (“first quarter percent”)** – Any city or town may levy a 0.25% real estate excise tax primarily for capital projects and limited maintenance.
- **REET 2 (“second quarter percent”)** – Additional 0.25% real estate excise tax primarily for capital projects and limited maintenance, but may only be imposed by cities that are fully planning under GMA.

Because these revenue sources are restricted to specific purposes, they must be accounted for separately in a capital projects fund for REET 1 proceeds ([RCW 82.46.030\(2\)](#)) and/or a special revenue fund for REET 2 income. Those cities and counties that are planning under GMA and levying both REET 1 and REET 2 need to keep track of each of these revenues separately because the uses to which they may be applied are different.

State statute also provides a few additional but narrowly focused REET options, as described later in this chapter.

REET 1 – THE “FIRST QUARTER PERCENT”

Quick Summary

- Any city or town may impose a 0.25% excise tax upon all real estate sales.
- Revenues are restricted and may only be used for certain capital purposes and housing relocation assistance, depending on the city’s population and whether it fully plans under GMA.
- May also be used for limited capital facility maintenance, with additional reporting requirements.
- Does not require voter approval.

RCW: [82.46.010\(2\)](#)

Any city or town may impose an excise tax of 0.25% – known as “REET 1” or the “first quarter percent” – upon all real estate sales ([RCW 82.46.010\(2\)](#)). REET 1 may be imposed by the legislative body and does not require voter approval. Almost all cities in the state have imposed REET 1, except for a few very small cities and towns.

Use of Revenues

REET 1 revenues are restricted and may only be used for certain purposes. However, the exact purposes depend on the city’s population and whether or not it is fully planning under the Growth Management Act (GMA).

Cities with a population of more than 5,000 that are fully planning under GMA: According to [RCW 82.46.010\(2\)\(b\)](#), these jurisdictions must spend the REET 1 revenues on “capital projects” that are listed in the capital facilities plan (CFP) element of their comprehensive plan. [RCW 82.46.010\(6\)](#) defines “capital projects” as:

[T]hose public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative facilities, judicial facilities, river flood control projects [...] and technology infrastructure that is integral to the capital project.

Sub-section (2)(b) also states that REET 1 funds may be spent on housing relocation assistance as defined within [RCW 59.18.440](#) and [59.18.450](#), which in summary provides assistance to low-income tenants under specific circumstances defined by statute and local ordinance.

In addition, a portion of the REET 1 proceeds may be used for the maintenance of capital facilities as described on the next page, with additional reporting requirements.

Note that REET 1 funds may not be used for developing or updating a capital facilities plan (CFP) or capital improvement plan (CIP), but they can be used for design, engineering, surveys, etc. associated with a specific qualifying project listed in a CFP or CIP.

Cities that are not required to fully plan under GMA, or that are fully planning under GMA and have a population of 5,000 or less: According to [RCW 82.46.010\(2\)\(a\)](#), these jurisdictions must use REET 1 funds “for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in [RCW 35.43.040](#).” [RCW 35.43.040](#) lists local improvements that can be funded through a local improvement district (LID), which includes projects such as streets, parks, sewers, water mains, swimming pools,

and gymnasiums. Local capital improvements include the acquisition of real and personal property associated with such improvements – so for instance, land acquisition for parks is a permitted expenditure.

Capital projects not listed in the local improvement statute (for example, a fire station, city hall, courthouse, or library) are also permitted uses as long as they are included in the city’s capital improvement plan. Expenditures that are not allowed are such things as the purchase of police cars or backhoes. Accountants may consider these to be “capital” for accounting purposes, but they are not considered “capital purposes” or “local capital improvements” as defined in the REET statute.

A 1984 letter between the Attorney General’s office and a county prosecutor,⁵¹ and confirmed in an Attorney General’s Memorandum in 1991, defines “local capital improvements” as “various kinds of things which may be done to a tract or parcel of tangible real property as an improvement thereto.”⁵²

In addition, a portion of the REET 1 proceeds may be used for the maintenance of capital facilities as described below, with additional reporting requirements.

Note that REET 1 funds may not be used for developing or updating a capital improvement plan (CIP), but they can be used for design, engineering, surveys, etc. associated with a specific qualifying project listed in a CIP.

Use of REET 1 for maintenance: Any city or town, regardless of its population or whether it fully plans under GMA, may use up to \$100,000 or 25% of its available REET 1 funds – whichever is greater, but not to exceed \$1 million per year – for the maintenance of capital projects ([RCW 82.46.015](#)). The definition of capital projects is the same as in [RCW 82.46.010\(6\)\(b\)](#). The definition of maintenance is provided in [RCW 82.46.015\(5\)](#):

For purposes of this section, “maintenance” means the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. “Maintenance” *does not* include labor or material costs for routine operations of a capital project [*emphasis added*].

To use REET 1 funds for maintenance, the city must fulfill additional reporting requirements defined within [RCW 82.46.015](#), including preparing and adopting a written report that includes:

- Information necessary to demonstrate that the city has, or will have, adequate funding from all sources to pay for all capital projects identified in its capital facilities plan.
- How revenues collected under REET 1 have been used during the prior two-year period.
- How revenues collected under REET 1 will be used for the succeeding two-year period.
- What percentage of funds for capital projects is attributed to REET 1 revenues compared to all other sources of capital project funding.

This report must be adopted as part of the city’s public budget process. Additionally, the city must declare that it has not enacted any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety; unless the requirement is specifically authorized by other state and federal laws.

51 [Informal opinion](#) dated March 6, 1984, from Philip H. Austin, Senior Deputy Attorney General, to Alan A. Hancock, Deputy Prosecuting Attorney for Island County.

52 Memorandum opinion dated July 16, 1991, from Maureen Hart, Senior Assistant Attorney General, Legal/Fiscal Division, to Steven Marcotte, Assistant Chief Examiner, State Auditor’s Office

REET 2 – THE “SECOND QUARTER PERCENT”

Quick Summary

- Any city or town that is fully planning under GMA may impose an additional 0.25% excise tax upon all real estate sales, in addition to the tax imposed under REET 1.
- Revenues are restricted and may only be used for certain transportation, water/storm/sewer, and park capital purposes.
- May also be used, with additional reporting requirements, for:
 - Limited capital facility maintenance.
 - REET 1 capital projects.
 - Affordable housing and homelessness (through January 1, 2026 only).
- Does not require voter approval for cities required to plan under GMA, but does require voter approval for cities voluntarily planning under GMA.

RCW: [82.46.035\(2\)](#)

In addition to REET 1, any city or town that is fully planning under the Growth Management Act (GMA) may impose an additional 0.25% – known as “REET 2” or the “second quarter percent” ([RCW 82.46.035](#)). For cities that are *required* to fully plan under GMA, REET 2 may be imposed by the legislative body and does not require voter approval. However, any city that is *voluntarily* choosing to plan under GMA must submit the REET 2 proposition to voters.

Ballot Measure Requirements for Voluntary GMA Cities

Voter approval for REET 2 is only required for cities and towns that are *voluntarily* planning under GMA. The proposition may be submitted at any special, primary,⁵³ or general election and must be approved by a simple majority of voters. According to MRSC’s [Local Ballot Measure Database](#), no voluntary GMA cities have attempted a voted REET 2 ballot measure recently.

Use of Revenues

REET 2 revenues are restricted and may only be used for financing “capital projects” specified in the capital facilities plan element of the city’s comprehensive land use plan. [RCW 82.46.035\(5\)](#) defines “capital project” as:

- (a) Planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems;
- (b) Planning, construction, reconstruction, repair, rehabilitation, or improvement of parks; and
- (c) Until January 1, 2026, planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of facilities for those experiencing homelessness and affordable housing projects.

⁵³ [RCW 82.46.035\(2\)](#) states that the proposition must be submitted “at a general election held within the district or at a special election within the taxing district,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

The definition of “capital project” for REET 2 is more restrictive than it is in the REET 1 statute. REET 2 funds are more specifically directed to infrastructure and parks capital projects. (However, note that park lands “acquisition” is not an allowed use for REET 2.) REET 2 omits public facilities such as law enforcement, fire protection, libraries, administration, and courts that were listed within the REET 1 statute.

However, REET 1 projects may be funded with REET 2 revenues as described below if certain limitations and additional reporting requirements are met. REET 2 revenues may also be used for limited maintenance expenses as well as affordable housing and homelessness purposes as described below.

Note that REET 2 funds may not be used for developing or updating a capital facilities plan (CFP) or capital improvement plan (CIP), but they can be used for design, engineering, surveys, etc. associated with a specific qualifying project listed in a CFP or CIP.

Use of REET 2 for maintenance and REET 1 projects: Any city may use up to \$100,000 or 25% of its available REET 2 funds – whichever is greater, but not to exceed \$1 million per year – for the following purposes ([RCW 82.46.037\(1\)](#)):

- The maintenance of REET 2 capital projects, as defined in [RCW 82.46.035\(5\)](#). The statute defines “maintenance” as “the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. ‘Maintenance’ does *not* include labor or material costs for routine operations of a capital project” [*emphasis added*].
- Planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, improvement, or maintenance of REET 1 capital projects (see [REET 1 – The “First Quarter Percent”](#)) that are not also included within the REET 2 definition of capital projects.

To use REET 2 funds for these limited purposes, the city must fulfill additional reporting requirements defined within [RCW 82.46.037](#), including preparing and adopting a written report that includes:

- Information necessary to demonstrate that the city has, or will have, adequate funding from all sources to pay for all capital projects identified in its capital facilities plan for a two-year period.
- How revenues collected under REET 2 have been used during the prior two-year period.
- How revenues collected under REET 2 will be used for the succeeding two-year period.
- What percentage of funds for capital projects is attributed to REET 2 revenues compared to all other sources of capital project funding.

The report must be adopted as part of the city’s public budget process. Additionally, the city must declare that it has not enacted any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety; unless the requirement is specifically authorized by other state and federal laws.

Use of REET 2 for affordable housing and homelessness: New legislation in 2019 expanded the use of revenues for homeless housing to also include affordable housing. Until January 1, 2026 any city may now use up to \$100,000 or 25% of its available REET 2 funds – whichever is greater, but not to exceed \$1 million – for affordable housing projects and the planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of facilities for those experiencing homelessness, as long as such projects are listed in the capital facilities plan. (These dollar limits do not apply to any city that used REET 2 revenue for homeless housing prior to June 30, 2019.)

To use REET 2 for affordable housing and homelessness, the city must document in its capital facilities plan that it has funds during the next two years for capital projects in subsection (5)(a) of the section – which is to say, all REET 2-eligible capital projects *except* park projects (which are listed in subsection (5)(b)). Note that these documentation requirements are much less stringent than the reporting requirements necessary to use REET 2 for maintenance/REET 1 projects.

REET IN LIEU OF “SECOND HALF” SALES TAX

Quick Summary

- Any city or town that has not imposed the “second half” sales tax may impose an additional 0.5% excise tax upon all real estate sales.
- Revenues are unrestricted and may be used for any lawful government purpose.
- Almost all cities have imposed the “second half” sales tax, which will likely generate more revenue.
- Does not require voter approval but is subject to possible referendum.

RCW: [82.46.010\(3\)](#)

Any city or town that is not levying the optional 0.5% “second half” sales tax (see *“Optional” Sales Tax/Second Half-Cent*) may levy an additional real estate excise tax up to 0.5% ([RCW 82.46.010\(3\)](#)). However, almost all cities have levied the “second half” sales tax and are not eligible for this revenue source.

This additional REET authority does not require voter approval. However, the imposition of this tax, a change in rate, or a repeal of the tax may be subject to referendum ([RCW 82.46.021](#)).

From a financial standpoint, the 0.5% second half sales tax will probably bring in more revenue than this additional 0.5% real estate excise tax.

Use of Revenues

The revenues are unrestricted and may be used for any lawful governmental purpose (unlike REET 1 and REET 2, which are limited to capital projects defined by statute and related maintenance).

OTHER REET OPTIONS

There are also two additional REET options that are only available to counties, but which cities should be aware of. These measures require voter approval and are applied to all properties countywide (including within incorporated cities). The county must consult city elected officials while developing a plan for the expenditure of the proceeds.

- **1.0% REET for conservation areas:** Any county may impose an additional real estate excise tax of up to 1.0% for the acquisition and maintenance of conservation areas ([RCW 82.46.070](#)).
- **0.5% REET for affordable housing:** Any county that imposed the full 1.0% REET for conservation areas no later than January 1, 2003, may also impose a real estate excise tax up to 0.5% for affordable housing ([RCW 82.46.075](#)). San Juan County is the only county that is eligible.

Other Excise Taxes

ADMISSION TAX

Quick Summary

- Any city may impose an admission tax up to 5% of the admission charge for various events and facilities.
- Revenues may generally be used for any lawful governmental purpose.
- Does not require voter approval.

RCW: [35.21.280](#)

Any city may levy an admission tax in an amount no greater than 5% of the admission charge for various facilities and events ([RCW 35.21.280](#)). The tax may be imposed by the legislative body and does not require voter approval.

This tax can be levied on admission charges (including season tickets or subscriptions) to venues such as theaters, dance halls, circuses, clubs that have cover charges, observation towers, stadiums, and any other activity where an admission charge is made to enter the facility or where a charge is made for food and drinks in a place where free entertainment, recreation, or amusement is provided. An admission charge may also be made on rental or use of equipment or facilities for the purposes of recreation or amusement, if the rental is a necessary component of the enjoyment.⁵⁴

The statute exempts cities from placing an admission tax on any elementary or secondary school activity and on any public facility district (PFD) of a city for which the PFD has levied an admission tax under [RCW 35.57.100](#). However, a city may impose its own tax on admissions to activities at a PFD, in addition to the district's, if the revenue is used for the construction, operation, maintenance, repair, replacement, or enhancement of that public facility or to develop, support, operate, or enhance programs in that public facility ([RCW 35.21.280\(1\)](#)).

⁵⁴ Counties have similar authority under [RCW 36.38.010](#). In *Ski Acres v. Kittitas County*, 118 Wn.2d 852 (1992), the Washington State Supreme Court ruled that the county could not levy its admission tax on ski lift tickets and/or rental equipment under [RCW 36.38.010\(2\)](#), which states, in part that the term "admission charge" includes:

a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of the privilege for which a general admission is charged, the combined charges shall be considered as the admission charge.

The court agreed with the plaintiff that, because one could enter the ski area without a charge, the county could not charge an admission tax on the ski lift price (or equipment rental). This same argument could apply to facilities such as bowling alleys and skating rinks.

Because the language in the city statute is similar, a court might possibly find that cities also cannot levy an admission tax in cases where people can enter a place without paying even though they have to pay to participate in the activity in that place. The statute authorizing the admission tax for cities and towns, however, is different from the statute authorizing the county tax, and the area of difference is found in the language used by the Supreme Court to invalidate Kittitas County's application of the tax to ski lifts. Without additional guidance by the courts, it is difficult to conclude whether cities possess greater taxing authority. An argument to that effect certainly could be made.

For cities located within King County (a county with a population of 1 million or more), the statute prohibits the levy of an admission tax on events in stadiums built after January 1, 1995 that have seating capacity greater than 40,000 and are owned by a PFD.

A city-imposed admission tax is administered at the local level, so collections and auditing are the city's responsibility and the city should include appropriate language within the enabling ordinance to require collection and remittance. Some cities have been known to exempt certain events such as those sponsored by nonprofits, but this is an option that is determined individually by each city that decides to impose the tax.

Use of Revenues

Admission tax revenues are unrestricted and may be used for any lawful governmental purpose. However, if the admission tax is levied upon activities at a PFD as described above, the revenue must be used for the construction, operation, maintenance, repair, replacement, or enhancement of that public facility or to develop, support, operate, or enhance programs in that public facility ([RCW 35.21.280\(1\)](#)).

BORDER AREA FUEL TAX

Quick Summary

- Any city within 10 miles of a Canadian border crossing, or any transportation benefit district encompassing a Canadian border crossing, may impose a gas tax up to 1 cent per gallon.
- Revenues are restricted and must be used for street maintenance and construction.
- Requires voter approval.

RCW: 82.47.020

Any city or town within 10 miles of a Canadian border crossing, or any transportation benefit district that includes a Canadian border crossing within its boundaries, may establish a special gas tax up to 1 cent per gallon in increments of 0.1 cents per gallon ([RCW 82.47.020](#)). This tax is in addition to any other federal, state, or local gas taxes and requires voter approval.

As of 2019, this tax has been implemented by the cities of Blaine, Nooksack, and Sumas, as well as the Point Roberts Transportation Benefit District.

The intent of this tax is help offset street maintenance and construction costs due to high border-crossing traffic volumes, with a portion of the costs borne by Canadian residents (many of whom buy gas in Washington border jurisdictions because fuel prices are generally lower than in British Columbia).

Use of Revenue

The entire proceeds of the tax, minus refunds authorized by the resolution imposing the tax and minus any amounts for administration and collection expenses, must be used solely for border area jurisdiction street maintenance and construction ([RCW 82.47.030](#)).

Ballot Measure Requirements

The border area fuel tax must be approved by a simple majority of voters and may be submitted at any special, primary,⁵⁵ or general election. According to MRSC's [Local Ballot Measure Database](#), Ferndale is the only city to attempt this revenue source in recent years and the measure failed.

⁵⁵ [RCW 82.47.020](#) states that the tax must be submitted at "a general or special election," which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four "special elections" each year, including the primary election. So for these purposes, "special election" includes the primary election.

COMMERCIAL PARKING TAX

Quick Summary

- Any city may impose a tax on commercial parking businesses.
- Revenues are restricted and must be used for transportation purposes.
- Does not require voter approval but is subject to possible referendum.

RCW: [82.80.030](#)

Any city or town may impose a tax on commercial parking businesses located within its boundaries ([RCW 82.80.030](#)). This tax may be imposed by the legislative body and does not require voter approval. However, it is subject to possible referendum under [RCW 82.80.090](#).

There is no limit on the tax rate, and there are many ways that a city can assess the tax. The city may impose the tax directly on parking businesses ([RCW 82.80.030\(1\)](#)), or it may impose a tax on the driver of the vehicle using the commercial parking facility ([RCW 82.80.030\(2\)](#)).

If the tax is imposed on the parking business, the rate must be based upon either gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business ([RCW 82.80.030\(4\)](#)).

If the tax is imposed on the driver, the tax may be a flat fee or a percentage amount, and the operator of the parking facility collects and remits the tax revenues to the city ([RCW 82.80.030\(2\)](#)). The tax rates may vary by any “reasonable factor,” including zoning, the location of the facility, parking duration, time of entry or exit, and the type or use of the vehicle. Cities may also exempt carpool vehicles, vehicles with a disabled parking placard, or government vehicles.

As of 2018, we are aware of nine cities imposing a commercial parking tax: Bainbridge Island, Bremerton, Milton, Mukilteo, Port Angeles, SeaTac, Seattle, Sumner, and Tukwila.

The city is responsible for administering the tax and adopting rules by resolution or ordinance. The city may provide for payment on a monthly, quarterly, or annual basis.

Use of Revenues

The revenue must be used for transportation purposes as defined in [RCW 82.80.070](#). This includes, but is not limited to:

- Operation and preservation of roads, streets, and other transportation improvements;
- New construction, reconstruction, and expansion of streets and highways and other transportation improvements;
- Development and implementation of public transportation and high capacity transit improvements and programs;
- Planning, design, and acquisition of right-of-way and sites for transportation purposes; and
- Transportation improvements in accordance with a transportation benefit district.

The statute prohibits the supplanting of funds. No city may use the commercial parking tax revenues to replace, divert, or loan any revenues currently being used for transportation purposes to non-transportation purposes ([RCW 82.80.070\(6\)](#)).

Any city with a population greater than 8,000 that levies a commercial parking tax must develop and adopt a specific transportation program identifying the geographic area where the tax revenues will be collected and expended, proposed transportation improvements and costs, how the plan is coordinated with other applicable local and regional transportation plans, and a six-year funding plan updated every year ([RCW 82.80.070\(3\)-\(5\)](#)).

GAMBLING TAX

Quick Summary

- Any city or town may tax gambling activities within its jurisdiction.
- Maximum tax rates depend upon type of gambling activity.
- Revenues are restricted and must be used for public safety purposes.
- Does not require voter approval.

RCW: 9.46.110

Gambling activities are regulated by the state, with the Washington State Gambling Commission regulating and licensing most gambling activities under [chapter 9.46 RCW](#). Cities and towns are limited in their authority to regulate gambling, but they may prohibit any or all gambling activities for which licenses are required ([RCW 9.46.295](#)).

Cities that choose to allow gambling may tax the gambling proceeds ([RCW 9.46.110](#)). Such gambling taxes may be imposed by the legislative body and do not require voter approval.

The maximum rates are set by statute and are listed below. Note that some of the maximum tax rates are based on net receipts (gross receipts minus prizes), while others are based on gross receipts. For definitions of each activity, refer to [chapter 9.46 RCW](#).

Gambling Activity	Maximum Tax Rate
Amusement games	Actual costs of enforcement, not to exceed 2% of net receipts*
Bingo	5% of net receipts*
Punch boards and pull-tabs by <i>charitable or nonprofit organizations</i>	10% of net receipts
Punch boards and pull-tabs by <i>commercial stimulant operators</i>	5% of gross receipts or 10% of net receipts
Raffles	5% of net receipts**
Social card games	20% of gross receipts

* For amusement and bingo games, charitable or nonprofit organizations with no paid operating or management personnel and combined net receipts of \$5,000 or less are exempt from taxation.

** For raffles conducted by a bona fide charitable or nonprofit organization, the first \$10,000 of net receipts are exempt from taxation.

Use of Revenues

Cities that implement this gambling tax “must use the revenue from such tax primarily for the purpose of public safety” ([RCW 9.46.113](#)).

LEASEHOLD EXCISE TAX

Quick Summary

- Any city or town may levy an excise tax up to 4% on most leases of tax-exempt properties.
- Tax is credited against state and county leasehold excise taxes.
- Revenues are unrestricted and may be used for any lawful governmental purpose.
- Does not require voter approval.

RCW: [82.29A.040](#)

Under state law, all publicly owned properties, as well as certain privately owned properties, are exempt from property tax under [Title 84 RCW](#). However, most leases of publicly-owned real and personal property in the state, as well as certain specified privately owned real or personal properties, are subject to a leasehold excise tax in lieu of property taxes, as long as the lessee (the tenant) would otherwise be subject to property tax if the lessee owned the property instead of leasing it ([chapter 82.29A RCW](#)).

The State of Washington imposes a 12.84% leasehold excise tax on the act or privilege of occupying or using publicly owned, or specified privately owned, real or personal property ([RCW 82.29A.030](#)).⁵⁶

In addition, any city or town is authorized to levy and collect a leasehold excise tax of up to 4% of the taxable rent on the occupancy or use of the same publicly owned, or specified privately owned, real or personal property within its jurisdictional limits. Counties have similar leasehold excise tax authority up to a rate of 6%. These local leasehold excise taxes do not require voter approval.

“Taxable rent” means the contract rent (when the lease is established by competitive bidding) or, in certain circumstances, rent as determined by the Department of Revenue (DOR) when a leasehold interest has not been established through competitive bidding and the compensation to the lessor does not represent fair market value of the lease or when a lease has not been renegotiated for at least 10 years. (See definitions in [RCW 82.29A.020](#).)

Publicly owned real or personal property also includes real or personal property owned by federally recognized Indian tribes, nonprofit fair associations, and community centers, as long as they are exempt from property tax. [RCW 82.29A.130](#) provides for exemptions on certain specified properties, while [RCW 82.29A.120](#) allows certain lessees to receive credits that reduce their leasehold excise tax payments.

Allocation of Leasehold Excise tax

Leasehold excise taxes imposed by cities and counties are credited against the 12.84% state leasehold excise tax. This credit is applied in layers, which is to say the county rate (with a maximum rate of 6%) is credited against the state rate, and the city rate (with a maximum rate of 4%) is credited against the county. For example, if the county imposes its maximum of 6% and no city has imposed a leasehold excise tax, the county will receive 6% countywide and the state will receive the remaining 6.84%. However, if a city also imposes its 4% maximum rate, the city will receive 4% and the county will receive 2%. The state would still receive the remaining 6.84%.

⁵⁶ [RCW 82.29A.030](#) establishes a tax rate of 12% plus an additional tax equal to the rate specified in [RCW 82.02.030](#) (which is 7%) multiplied by 12%. 12% times 7% is 0.84%, which brings the total tax rate to 12.84%.

Use of Revenues

Leasehold excise tax revenues are unrestricted and may be used for any lawful governmental purpose.

Timing of Receipts

For any city-owned properties, the city collects the 12.84% leasehold tax and remits the full amount to the Department of Revenue. For other eligible tax-exempt properties located within the city, the tax must be collected by the lessor and remitted to DOR on a quarterly basis, and federal property reports directly to the DOR on an annual basis. The DOR, after deducting an administrative fee ([RCW 82.29A.080](#)), distributes the taxes back to cities on a bimonthly basis ([RCW 82.29A.090](#)).

LOCAL HOUSEHOLD TAX

Quick Summary

- Excise tax of up to \$1.00 per month per household; may not be imposed concurrently with transit sales tax.
- Revenues must be used for public transportation improvements.
- Does not require voter approval but may be subject to referendum.

RCW: 35.95.040

Any city or town that provides transit service may impose a local household tax of up to \$1.00 per month per household ([RCW 35.95.040](#)) to support its transit system. However, any jurisdiction imposing a transit sales tax under [RCW 82.14.045](#) (see [Transit Sales Tax](#)), or located within a transit district that imposes such a sales tax, may not impose a local household tax and vice versa. As of 2018, we are not aware of any cities or counties that impose this local household tax, and most transit agencies rely on sales taxes instead, which generate far more revenue.

Local household taxes may be imposed by city council ordinance. While a public vote is not explicitly required,⁵⁷ state statute says that any municipality adopting a local household tax “may” refer the ordinance to voters before making the ordinance effective ([RCW 35.95.090](#)). In addition, the measure may be subject to possible referendum ([RCW 35.95.080](#)).

The tax is administered by the city clerk or treasurer, and the tax is billed and collected at such times and in the manner determined by the city ([RCW 35.95.050](#)).

Use of Revenues

The revenues must be used for the operation, maintenance, and capital needs of its municipally owned or leased and municipally operated public transportation system.

⁵⁷ [RCW 35.95.040](#) requires a public vote for local household taxes imposed by public transportation benefit areas or county transportation authorities, but not for cities or towns.

LOCAL OPTION GAS TAX

Quick Summary

- Counties may impose a local option gas tax of 10% of the state gas tax rate.
- Revenues are shared with cities and must be used for transportation purposes.
- Requires voter approval.

RCW: 82.80.010

Any county may impose a countywide local option motor vehicle fuel excise tax (gas tax) at a rate equal to 10% of the current state gas tax rate, with some of the revenue shared with the cities and towns within the county ([RCW 82.80.010](#)). As of 2019 the state gas tax is 49.4 cents per gallon, so the local option gas tax would be 4.94 cents per gallon. This tax is in addition to any other federal, state, or local gas taxes and requires voter approval.

A local option gas tax must be approved by a simple majority of voters, and the increased gas tax may only be implemented on January 1, April 1, July 1, or October 1. A county may not levy this tax if it is participating in a regional transportation investment district and the county or district has imposed the motor vehicle and special fuel tax under [RCW 82.80.110](#) or [RCW 82.80.120](#).

Cities and transportation benefit districts near the Canadian border have separate authority to impose an additional gas tax up to 1 cent per gallon (see [Border Area Fuel Tax](#)).

Revenue Sharing

The revenues are shared between the county and the cities on a per capita (population) basis ([RCW 82.80.080](#)). The county's share is calculated based on 1.5 times the unincorporated population, as shown in the example below.

Example of Revenue Sharing for Local Option Gas Tax

Total revenue: \$100,000

Jurisdiction	Population	Adjusted Population	Percent of Adjusted Population	Revenues Received
City A	5,000	5,000	5%	\$5,000
City B	25,000	25,000	25%	\$25,000
City C	10,000	10,000	10%	\$10,000
Unincorporated county	40,000	x1.5 = 60,000	60%	\$60,000
TOTAL	80,000	100,000	100%	\$100,000

Prior to the imposition of the local option gas tax, the county must contract with the Department of Revenue (DOR) for the administration and collection of the tax, with DOR withholding up to 1% as an administrative fee.

Use of Revenues

The revenues are restricted and must be used strictly for transportation purposes in accordance with [RCW 82.80.070](#). This includes, but is not limited to:

- Operation and preservation of roads, streets, and other transportation improvements;
- New construction, reconstruction, and expansion of streets and highways and other transportation improvements;
- Development and implementation of public transportation and high capacity transit improvements and programs;
- Planning, design, and acquisition of right-of-way and sites for transportation purposes; and
- Transportation improvements in accordance with a transportation benefit district.

However, the statute goes on to say that proceeds from the local option gas tax under [RCW 82.80.010](#) “shall be used exclusively for ‘highway purposes’ as that term is construed in Article II, section 40 of the state Constitution.” The constitutional definition is narrower than the “transportation purposes” identified in the beginning of the statute. Until this inconsistency is addressed or clarified, we would recommend using the narrower, more conservative constitutional definition.

Timing of Receipts

The distribution is made by the State Treasurer’s Office on a monthly basis to the county and its cities.

TIMBER EXCISE TAX

Quick Summary

- Credit against state timber excise tax.
- May only be imposed by counties, which share the revenue with other taxing districts (including some cities) based on timber sales, timber assessed value, and levy rates.

RCW: [84.33.041](#), [84.33.051](#), [84.33.081](#)

The State of Washington imposes a 5% excise tax upon all timber sales on public or private land. However, any county may take a credit of 4% against the state timber excise tax (see [RCW 84.33.041](#) and [RCW 84.33.051](#)). This means that the excise tax paid by the harvester remains 5%, but that the state excise tax rate is effectively reduced to 1% while the county receives the remaining 4%.

The county must share the revenue with all taxing districts within the county that have timber assessed value (TAV) – primarily school districts and special purpose districts. Most cities and towns will receive little to no revenue from the timber excise tax due to the lack of timberlands within incorporated areas.

The distribution amounts depend on each district's levy rate for the current year as well as the district's TAV and the actual amount of timber excise taxes collected. [RCW 84.33.081](#) establishes five distribution tiers:

- **Priority 1:** Taxing districts with general obligation (G.O.) bond levies, and school districts with excess levies for capital purposes.
- **Priority 2:** School districts.
- **Priority 3:** All taxing districts with a regular or excess levy not listed in Priority 1 or 2.
- **Priority 4 (if any):** County reserve for next year's timber excise tax distributions.
- **Priority 5 (if any):** All excess funds after Priority 4 will be distributed to Priority 3 jurisdictions.

Many cities have no timber assessed value and will not receive any distributions. However, if a city *does* have timber assessed value, it will be eligible for distributions. If an eligible city has an excess levy for the repayment of voted G.O. bonds, it will receive a Priority 1 distribution. In addition, an eligible city will receive Priority 3 distributions for all of its levies (for instance, the general fund levy and the EMS levy) based on the city's levy rate(s).

If there are enough timber revenues for a full distribution, each eligible city will receive (for each levy) an amount equal to its timber assessed value multiplied by its levy rate. If there are insufficient funds for the full distribution, each taxing district's distribution(s) will be reduced proportionately.

Use of Revenues

The revenues must be used for the same purposes as the levy itself. For instance, a Priority 1 distribution for a city's G.O. bond excess levy must be used for repayment of bonds, a Priority 3 distribution for a city's EMS levy must be used for emergency medical services, and a Priority 3 distribution for the city's general fund levy is unrestricted and may be used for any lawful governmental purpose.

Timing of Receipts

The county distributes timber excise tax payments to eligible jurisdictions four times per year: in February and August (for Priority 1) and May and November (for Priority 3).

“State Shared” Revenues

Intergovernmental revenues are revenues that come from another government entity outside of the umbrella of your local government entity. Federal and state governments are the two primary sources of intergovernmental revenues. In particular, the State of Washington has distributed a number of “state shared” revenues to cities and counties over the past several decades.

Depending upon who is discussing the topic of “state shared” revenues, the definition may vary to some degree. For our purposes, we will generally consider state shared revenues to be any revenues distributed and allocated to cities, towns, and counties by a formula set in state statute or appropriated by the legislature through the state budget process.

However, there are also other revenues that some consider to be “state shared.” For instance, there are certain credits against state taxes that some consider to be state shared revenues, such as the basic 2% lodging tax (see [Lodging Tax \(Hotel/Motel Tax\)](#)) or the timber excise tax (see [Timber Excise Tax](#)). We have placed those revenue sources elsewhere within the *Revenue Guide*, as these resources are provided for by statute and are not subject to legislative appropriation. In those examples, cities and counties have greater statutory authority and the local legislative body must take specific action (adopting a resolution or ordinance) to begin collecting these revenues.

While a few state shared revenues are influenced by local policies (such as marijuana excise taxes), most are distributed based on population or other factors that are beyond the city’s direct control.

Some distributions are established as a flat dollar amount, while others are automatically indexed to inflation or are distributed as a percentage of actual state tax receipts. Many state shared revenues are distributed to all cities in the state, while others are distributed only to those jurisdictions that meet certain criteria.

State shared revenues are valuable revenue sources for local governments and provide funding for many city programs. However, these revenue streams depend upon the state legislative process, the economy, and political factors. Remember that these resources are vulnerable during any legislative session, especially when the economic forecasts start decreasing.

CAPRON REFUNDS

Quick Summary

- Island counties and cities receive refunds of state gas taxes and motor vehicle license fees to compensate for their lack of state highways and state highway investment.
- Only distributed to San Juan and Island counties and their cities.

RCW: 46.68.080

San Juan and Island counties (counties composed entirely of islands), and the cities located within those counties, receive a share of the state gas tax and vehicle license fees called Capron refunds⁵⁸ to compensate for their lack of state highways and state highway investments ([RCW 46.68.080](#)). This is a significant source of transportation funding for these jurisdictions, and revenues are shared between the cities and the county.

To calculate the gas taxes paid by island residents, the state uses the ratio of vehicle license fees paid by county residents compared to the total vehicle license fees collected statewide. It then multiplies that ratio by the total statewide gas tax collections to generate an estimate of gas taxes paid by island residents.

San Juan County

In San Juan County, which has no state highway or physical connection to the mainland, the state refunds all of the vehicle license fees ([RCW 46.17.350](#) and [RCW 46.17.355](#)) and the first 23 cents per gallon of motor vehicle fuel taxes ([RCW 82.38.030\(1\)](#)) directly or indirectly paid by its residents, minus the state's administrative costs of collecting the taxes and fees. The remaining revenue is then distributed to the county treasurer and split between the county and Friday Harbor based on their proportional assessed valuation.

Island County

In Island County, which has some state highways and a physical connection to the mainland, the state refunds half of the vehicle license fees ([RCW 46.17.350](#) and [RCW 46.17.355](#)) and the first 11.5 cents per gallon of motor vehicle fuel taxes (half of the tax in [RCW 82.38.030\(1\)](#)) directly or indirectly paid by its residents, minus the state's administrative costs of collecting the taxes and fees. The remaining revenue is then distributed to the county treasurer and split between the county and its cities based on their proportional assessed valuation.

Use of Revenues

Since Capron refunds are paid from the state motor vehicle fund, they must be placed in the city street fund and used for the same purposes as the motor vehicle fuel tax (see [Motor Vehicle Fuel Tax \(MVFT\)](#)).

⁵⁸ These are called "Capron" refunds because the original legislation creating these refunds was sponsored by Rep. Victor J. Capron of San Juan County.

CITY-COUNTY ASSISTANCE (ESSB 6050) DISTRIBUTIONS

Quick Summary

- Portion of the state real estate excise tax (REET) is shared with certain cities that have relatively low per capita assessed values.
- Originally intended to mitigate the loss of motor vehicle excise tax (MVET) revenues following I-695 in 1999.
- Distribution formula is complicated and depends upon population, assessed value, sales tax receipts, and historical budget distributions.
- Revenues are unrestricted and may be used for any lawful governmental purpose.

RCW: 82.45.230, 43.08.290

The State of Washington imposes a real estate excise tax (REET) on each sale of real property (see [Real Estate Excise Taxes \(REET\)](#)), of which the state shares 1.4% of the revenues with certain cities and counties with relatively low taxing capacity based on a complicated formula ([RCW 82.45.230](#) and [RCW 43.08.290](#)). These distributions are known as “city-county assistance,” or occasionally “distressed city assistance” or “ESSB 6050 distributions” after the original 2005 legislation.

These funds were originally intended to mitigate the loss of motor vehicle excise taxes (MVET), commonly known as “car tab fees,” that were distributed to local governments. The state used to impose a 2.2% MVET annually upon the value of each vehicle within the state, of which a significant portion was shared with cities and counties.

Initiative 695, approved by voters in 1999, repealed the statewide MVET vehicle licensing system and replaced it with a flat \$30 annual license tab fee. This initiative had a significant impact on local governments including cities, towns, and counties. A good portion of the MVET was used to equalize the disparity between smaller jurisdictions that did not meet statewide averages for assessed property values or retail sales tax income. At the beginning of 2000, some cities saw a reduction in general fund revenues as high as 60%. The initiative was later ruled unconstitutional, but the state legislature retained the intent of the initiative and maintained the reduced car tab fees.

To compensate for the loss of MVET, the state legislature appropriated a portion of the state REET revenues to support “local government assistance” for the affected entities, also known as “MVET backfill.” During the 2005 legislative session, the legislature adopted ESSB 6050 establishing the current city-county assistance program.

Because the city-county assistance program depends upon actual real estate sales, this revenue source can be somewhat volatile during economic downturns. When the statewide real estate market is strong, there are sufficient revenues to fund the entire distribution. But if the market is weaker, there is often not enough revenue to fund the entire distribution, and each city or county will see its distribution reduced proportionately.

Eligibility and Distribution Formula

The formula for distributing city assistance funds is rather complicated. A city’s eligibility depends upon its per capita assessed valuation, as shown in the table below.

City Assistance Funding Eligibility

City/town population	Only eligible if city's per capita assessed value is:
5,000 or less	Less than 2x the statewide average for all cities
Greater than 5,000	Less than the statewide average for all cities

The exact distribution amount each eligible city receives depends upon its population, per capita assessed value, per capita “first half” sales tax receipts (see ["Basic" Sales Tax/First Half-Cent](#)) and streamlined sales tax mitigation payments (if any – see [Streamlined Sales Tax \(SST\) Mitigation Payments](#)), and historical “MVET backfill” distributions from the 2004-2005 state biennial budget.

The key terms to understand are:

- **2005 MVET backfill:** The local government assistance moneys (if any) received by each city in state fiscal year 2005 under section 721, Ch. 25, Laws of 2003 1st special session (amended state budget).
- **Property tax equalization:** For cities with an assessed value (AV) less than 55% of the per capita average for all cities, an amount determined by subtracting the city's per capita AV from 55% of the statewide AV, dividing that amount by 1,000, and multiplying the result by the city's population.
- **Sales tax equalization:** The amount of money required to increase a city's combined per capita sales tax receipts from the “first half” sales tax plus per capita streamlined sales tax mitigation payments (if any) to a designated percentage of the weighted “first half” per capita average for all cities statewide.

No city may receive more than \$100,000 (in 2005 dollars) plus inflation, and any city that incorporates after August 1, 2005 is not eligible. The exact formulas are summarized below. Note that the sales tax equalization thresholds are slightly different depending on the city's population, and that the MVET backfill only applies to cities with a population of 5,000 or less.

City Assistance Distribution Formulas

City/town population	Amount received
5,000 or less <i>Per capita AV less than 2x the statewide average</i>	Greater of: <ul style="list-style-type: none"> • 55% sales tax equalization, • 55% property tax equalization, or • 2005 MVET backfill <i>Not to exceed \$100,000 (2005 dollars) plus inflation</i>
Greater than 5,000 <i>Per capita AV less than the statewide average</i>	Greater of: <ul style="list-style-type: none"> • 50% sales tax equalization, or • 55% property tax equalization <i>Not to exceed \$100,000 (2005 dollars) plus inflation</i>

If there are not enough state REET revenues to fund the entire distribution, then each city's individual distribution will be reduced proportionately. If there are more than enough revenues to fund the entire distribution, the excess funds will be distributed on a per capita (population) basis to all eligible cities that have imposed the full 0.5% “second half” sales tax (see ["Optional" Sales Tax/Second Half-Cent](#)). Any city or town that has not

imposed the full 0.5% “second half” will still receive its regular city assistance distribution but is not eligible to receive any excess funds.

For the most recent distribution estimates, refer to our annual [Budget Suggestions publication](#), released each year at the end of July.

Use of Revenues

City-county assistance revenues are unrestricted and may be used for any lawful governmental purpose.

Timing of Receipts

Payments are distributed quarterly on the last business day of March, June, September, and December. The actual legislation requires the funds to be distributed on January 1, April 1, July 1, and October 1. However, the State Treasurer’s Office regularly distributes funds to local governments on the last business day of the month, so in order to meet these deadlines the funds are distributed on the last business day of the preceding month.

CRIMINAL JUSTICE DISTRIBUTIONS

Quick Summary

- Five separate programs:
 - **High Crime** for certain cities with crime rates above 125% of the state average.
 - **Population** for all cities and towns on a per capita basis, with each city receiving a minimum of \$1,000 no matter how small its population.
 - **Special Programs** for all cities and towns on a per capita basis, with revenues used for innovative law enforcement, at-risk children and child abuse victims, or domestic violence programs.
 - **Contracted Services** for any city or town that contracts for the majority of its law enforcement services.
 - **Violent Crime** for certain cities with violent crime rates above 150% of state average.
- Revenues are restricted to specified criminal justice purposes.

RCW: [82.14.320](#), [82.14.330](#)

There are two separate criminal justice distributions for cities, created by [RCW 82.14.320](#) and [82.14.330](#). Each program originally (in state fiscal year 2000) appropriated a total of \$4.6 million, to be increased each July by the “fiscal growth factor” set forth in [RCW 43.135.025](#). The fiscal growth factor is the average annual growth in state personal income for the prior ten fiscal years.

The two statutes together contain five separate distribution programs:

- **High Crime** ([RCW 82.14.320](#)) for certain cities with crime rates above 125% of the state average
- **Population** ([RCW 82.14.330\(1\)\(a\)\(ii\)](#)) for all cities and towns on a per capita (population) basis
- **Special Programs** ([RCW 82.14.330\(2\)\(a\)\(ii\)](#)) for all cities and towns on a per capita (population) basis, with revenues used for innovative law enforcement, at-risk children and child abuse victims, or domestic violence programs
- **Contracted Services** ([RCW 82.14.330\(2\)\(a\)\(i\)](#)) for any city or town that contracts for the majority of its law enforcement services
- **Violent Crime** ([RCW 82.14.330\(1\)\(a\)\(i\)](#)) for certain cities with violent crime rates above 150% of the state average

High crime is the largest single distribution program, since the total distribution for high crime (contained in [RCW 82.14.320](#)) is equal to the combined distributions of the other four programs (which are all contained in [RCW 82.14.330](#)).

Eligibility and Distribution Formulas

A brief summary of the distribution formulas and eligibility follows. For more details, as well as the most recent distribution estimates, refer to our annual [Budget Suggestions publication](#), released each year at the end of July.

High Crime: Distributed on the basis of crime rates and population to any city with a crime rate over 125% of the annual statewide average that also:

- Has levied the full 0.5% “second half” sales tax (see ["Optional" Sales Tax/Second Half-Cent](#)) or has imposed the additional 0.5% real estate excise tax in lieu of the second half (see [REET in Lieu of "Second Half" Sales Tax](#)), AND
- Has a per capita yield from the “first half” sales tax (see ["Basic" Sales Tax/First Half-Cent](#)) that is less than 150% of the average statewide per capita yield.

30% of the high crime funds are distributed on a per capita (population) basis to eligible cities with a crime rate greater than 175% of the statewide average, although no city may receive more than 50% of that amount. The remaining money is distributed on a per capita basis to all eligible cities with a crime rate greater than 125% of the statewide average.

Population: Distributed to all cities on a per capita (population) basis, with each city receiving a minimum of \$1,000 no matter how small its population.

Special Programs: Distributed to all cities on a strictly per capita (population) basis.

Contracted Services: Distributed on a strictly per capita (population) basis to all cities that contract with another governmental agency for the majority of their law enforcement services. Cities that qualify for this distribution must notify the Department of Commerce (DOC) by November 30 to receive distributions for the following year. Cities are responsible for notifying DOC for any changes regarding these contractual relationships. Any cities that are added to or removed from this list will only impact distributions for the next calendar year, and no adjustments will be made retroactively.

Violent Crime: Distributed on a strictly per capita (population) basis to all cities with a three-year violent crime rate (per 1,000 population) above 150% of the three-year statewide average. No city may receive more than \$1.00 per capita. Any moneys remaining undistributed at the end of each calendar year must be distributed to the criminal justice commission to reimburse participating city law enforcement agencies with 10 or fewer full-time commissioned patrol officers for the cost of temporarily replacing each officer who is enrolled in basic law enforcement training as provided in [RCW 43.101.200](#).

Use of Revenues

All criminal justice distributions are restricted and may only be used for the following purposes:

High Crime: All revenues must be used for criminal justice purposes as defined in [RCW 82.14.320](#) and may not supplant or replace existing funding. “Criminal justice purposes” are defined as:

[A]ctivities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in [RCW 70.123.020](#), and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth.

Special Programs: All revenues must be used for innovative law enforcement strategies, programs to help at-risk children or child abuse victims, and programs to reduce the level of domestic violence or to provide counseling for domestic violence victims. While these funds must be spent in these specific areas, there is no requirement for how much must be spent in each area. The city’s entire distribution could be spent in only one of these areas if the city wishes.

Population and Violent Crime: All revenues must be used for criminal justice purposes as defined in [RCW 8.14.330\(1\)\(c\)](#) and may not supplant or replace existing funding. The definition is the exact same as for the High Crime program (see previous), except that revenues may *not* be used for publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth.

Contracted Services: While the statute does not specifically state that the revenues are restricted to the provision of law enforcement services, it is most certainly implied. The statute requires a contract between the city and another government agency for law enforcement in order to receive a per capita distribution of this restricted resource.

It is worth noting that the statutory restrictions on use of all of the monies distributed under RCW 82.14.330 are additionally subject to review by the state auditor and should it be determined that the use does not comply with the criteria outlined above the city will become ineligible to receive future distributions until the use of the moneys are either justified or repaid to the state general fund.

Timing of Receipts

All criminal justice payments are distributed quarterly, on the last business day of January, April, July, and October.

FIRE INSURANCE PREMIUM TAX

Quick Summary

- Distributed to all cities with a pre-LEOFF firefighters' pension fund, based on their proportionate number of paid firefighters.
- Revenues are restricted and must be used for the firefighters' pension fund.

RCW: 41.16.050

[RCW 41.16.050](#) requires each municipality that had a regularly organized full-time fire department with paid firefighters prior to the establishment of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) on March 1, 1970 to establish a firefighters' pension fund. This fund is to consist of all bequests, gifts, or donations given or paid to the municipality for the firefighters' pension fund; a proportional share of the state tax on fire insurance premiums (described below); property taxes collected under the provisions of [RCW 41.16.060](#) (see *Regular Levy (General Fund)*); interest on the investments of the fund; and any contributions made by firefighters themselves.

The state collects a 2% tax on the premiums of all insurance policies written ([RCW 48.14.020](#)). Of the tax collected on fire policies and the fire component of homeowner's and commercial multi-peril policies, 25% is distributed to cities and fire districts that have firefighters' pension funds ([RCW 41.16.050](#)).

Eligibility and Distribution Formula

Fire insurance premium taxes are distributed to all cities with a pre-LEOFF firefighters' pension fund. The distribution to each city is based on its proportionate share of paid firefighters, a number known as the "ratio value." Each year on or before January 15, all cities, towns, and fire districts with a pre-LEOFF firefighters' pension fund must certify to the State Treasurer their number of paid firefighters.

Use of Revenues

Fire insurance premium tax revenues are restricted and must be used for the firefighters' pension fund as established by [chapter 41.16 RCW](#).

Timing of Receipts

The Office of Insurance Commissioner (OIC) certifies the fire insurance premiums collected by March 31, and distributions are made in one lump sum each year on the last business day of May.

LIQUOR DISTRIBUTIONS

Quick Summary

- Distributed to all cities and towns on a per capita basis.
- All cities and towns receive two separate distributions:
 - **Liquor profits:** Flat distribution from liquor licensing fees. Revenues are partially restricted – at least 2% must be used for a drug or alcohol treatment program and the remaining 98% is unrestricted and may be used for any lawful governmental purpose.
 - **Liquor excise:** Depends on actual liquor sales. Revenues are partially restricted – at least 2% must be used for a drug or alcohol treatment program and at least 20.23% must be used for public safety programs. The remaining 77.77% is unrestricted and may be used for any lawful governmental purpose.

RCW: 82.08.160, 82.08.170 – Liquor excise

66.24.065 – Liquor profits

All cities and towns receive a portion of state liquor revenues. There are two separate liquor distributions: “liquor profits” and “liquor excise.”

Liquor excise is a small share of the state’s excise tax on liquor sales and varies each year depending on actual liquor sales.

Liquor profits is an allocation from the liquor revolving account for liquor licensing fees charged to distributors and retailers, and it will remain the same each year unless changed by the legislature.⁵⁹ The total distribution is the same as what cities received during “comparable periods” prior to December 8, 2011 and the passage of Initiative 1183, which privatized liquor sales, plus an additional distribution for the purpose of enhancing public safety programs. The “comparable periods” were determined by the Office of Financial Management to be December 2010, March 2011, July 2011, and September 2011.

Eligibility and Distribution Formulas

Both liquor excise and liquor profits are distributed to all cities on a strictly per capita (population) basis.

In addition, “border areas” (any city, town, or unincorporated area within seven miles of the Canadian border) receive an additional liquor profits distribution based on per capita law enforcement spending, border-crossing traffic totals, and border-related crime statistics ([RCW 66.08.195](#) and [.196](#)).

For the most recent distribution estimates, refer to our annual [Budget Suggestions publication](#), released every year at the end of July.

⁵⁹ Prior to 2012, all liquor stores in Washington were state-run, and the state received direct liquor profits in addition to excise tax revenues. However, Initiative 1183 in 2011 privatized liquor sales. The state still charges an excise tax on liquor sales, but it no longer receives liquor profits. Instead, the state now collects revenue in the form of license fees from distributors and retailers. However, the Liquor and Cannabis Board (LCB) continues to call these liquor licensing funds “liquor profits.”

Use of Revenues

- **Liquor excise:** At least 2% of liquor excise revenue must be used for an alcohol or drug addiction program under [RCW 71.24.555](#). The remaining 98% is unrestricted and may be used for any lawful governmental purpose.
- **Liquor profits:** At least 2% of liquor excise revenue must be used for an alcohol or drug addiction program under [RCW 71.24.555](#). In addition, at least 20.23% must be used for “enhancing public safety programs.”⁶⁰ The remaining 77.77% is unrestricted and may be used for any lawful governmental purpose.

Timing of Receipts

Payments are distributed quarterly, but liquor excise and liquor profits are distributed according to a different schedule:

- **Liquor excise:** Distributed on the last business day of January, April, July, and October.
- **Liquor profits:** Distributed on the last business day of March, June, September, and December.

⁶⁰ This is because the total liquor profits distribution to cities, counties, and border areas for the “comparable periods prior to December 8, 2011” was \$39,438,000. To this amount, the legislature added an extra \$10 million for “enhancing public safety programs” ([RCW 66.24.065](#)). This results in a total liquor profits distribution of \$49,438,000, of which \$10 million (just under 20.23%) must be used for enhancing public safety programs. As a result, each city and town must spend at least 20.23% of its distribution for enhancing public safety programs.

MARIJUANA EXCISE TAX

Quick Summary

- A portion of the state’s marijuana excise tax is distributed to cities and counties depending on their marijuana policies.
- Two separate components:
 - **Per capita share** distributed to all cities and counties that do not prohibit marijuana businesses.
 - **Retail share** distributed to cities and counties where marijuana retailers are located, in proportion to statewide marijuana revenues.
- No clear guidance on use of revenues, but stated intent of I-502 is that marijuana legalization will “[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention.”

RCW: 69.50.540(2)(g)

Initiative 502 (I-502), which was approved by voters in 2012, legalized recreational marijuana and authorized marijuana excise taxes. Marijuana excise taxes are imposed and collected by the State of Washington; as of 2018, the state imposes a 37% marijuana excise tax on the retail sale of marijuana, marijuana concentrates, and marijuana-infused products ([RCW 69.50.535](#) and [WAC 314-55-089](#)).

Cities and counties may *not* impose additional local excise taxes upon the sale of marijuana. However, the state shares some of the excise tax revenues with cities and counties, as mandated by I-502.⁶¹ The actual revenues received by cities depend on legislative appropriations from the state budget. The state legislature has previously attempted to reduce local marijuana excise tax distributions, and like all shared revenues these distributions could be changed in future legislative sessions.

Marijuana excise tax distributions depend in significant part upon local marijuana policies and regulations. The regulatory approach that each city adopts, as well as the number of local marijuana retailers, will determine whether the city receives any marijuana excise tax revenue (and how much).

Eligibility and Distribution Formula

There are two separate components to marijuana excise tax distributions:

- **Per capita share:** Distributed on a strictly per capita (population) basis to all cities, towns, and counties that allow the siting of marijuana producers, processors, AND retailers. Any jurisdiction that prohibits marijuana producers, processors, OR retailers is not eligible.
- **Retail share:** Distributed to all cities, towns, and counties where licensed marijuana retailers are physically located, and in proportional share to total statewide marijuana retail sales.

The different distribution formulas mean that some jurisdictions will receive both the per capita and retail distributions, while others may receive only one or the other, and some jurisdictions will receive neither. The chart below shows a few hypothetical scenarios to illustrate the differences.

⁶¹ The intent of I-502 states, among other things, that it will “[generate] new state *and local* tax revenue” [emphasis added], although it does not specify how the revenue will be shared with local governments or how much will be shared.

Hypothetical Marijuana Excise Tax Distribution Scenarios	Eligible for per capita share?	Eligible for retail share?
City allows marijuana production, processing, and retail and has at least one retailer located within the jurisdiction.	Yes	Yes
City prohibits marijuana entirely and has no retailers located within the jurisdiction.	No	No
Town took no action to prohibit marijuana, but is small enough that no marijuana businesses can locate there under state law due to the buffer requirements.	Yes	No
City prohibits marijuana producers and processors but allows retailers and has at least one retailer located within the jurisdiction.	No	Yes
City currently prohibits new marijuana businesses but has existing retailers that are grandfathered in.	No	Yes
City prohibits marijuana retail and has no retailers but allows marijuana production and processing.	No	No

Each year by September 15, the LCB must provide the state treasurer with the annual distribution amount for each county and city. For the most recent legislative appropriations and distribution estimates, refer to our annual [Budget Suggestions publication](#), released every year at the end of July.

Use of Revenues

The restrictions on the use of marijuana excise tax revenues are somewhat murky, as there is no clear statute stating how the funds must be used. However, the notes in [RCW 69.50.540](#) reference [RCW 69.50.101](#) and the stated intent of I-502, which states that marijuana legalization will “[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention.”

Timing of Receipts

Payments are distributed quarterly on the last business day of March, June, September, and December. The State Treasurer’s Office distributes both the “per capita” and “retail” shares together in one payment using the same BARS code.

MOTOR VEHICLE FUEL TAX (MVFT)

Quick Summary

- Distributed to all cities and towns on a per capita basis.
- Total distributions depend on amount of gas taxes collected statewide.
- Revenues are restricted and must be used for streets, roads and highways.
- Cities must use at least 0.42% for pedestrian, equestrian, or bicycle trails, unless such amount would be \$500 or less per year.

RCW: 46.68.090, 46.68.110

The motor vehicle fuel tax (MVFT), or gas tax, is the single largest state shared revenue source for cities and towns, and it has been consistently distributed for decades. (See [RCW 46.68.090](#) and [RCW 46.68.110](#).) MVFT revenues are distributed to all cities, towns, and counties as a percentage of actual state fuel tax revenues received.

Gas taxes in Washington are assessed in cents per gallon, which means that MVFT distributions depend on the number of gallons sold, not the price per gallon. Like all state shared revenues, these distributions could be changed in future legislative sessions. However, MVFT has not had a history of legislative changes because all transportation revenues are recorded within the motor vehicle fund (rather than the state general fund) and are restricted to transportation purposes ([Art II, Section 40 State Constitution](#)).

Eligibility and Distribution Formula

All cities and towns receive MVFT distributions on a strictly per capita (population) basis. For the most recent distribution estimates, refer to our annual [Budget Suggestions publication](#), released each year at the end of July.

Use of Revenues

The revenues must be placed in a designated city street fund and used for the following highway or street purposes ([RCW 47.24.040](#)):

- Salaries and wages;
- Material, supplies, or equipment;
- Purchase or condemnation of right-of-way;
- Engineering;
- Any other proper highway or street purpose in connection with the construction, alteration, repair, improvement, or maintenance of any city street or bridge, or viaduct or underpassage along, upon, or across such streets; and/or
- Planning, accommodation, establishment, or maintenance of pedestrian, equestrian, or bicycle trails within an existing highway right-of-way or severed by the highway ([RCW 47.30.030](#) and [RCW 47.30.060](#)).

Any MVFT expenditures may be made independently or in conjunction with any federal, state, or county funds.



Each city is required to spend at least 0.42% of its MVFT funds during each state fiscal year (July 1 to June 30) on pedestrian, equestrian, or bicycle trails, unless 0.42% would amount to \$500 or less ([RCW 47.30.050](#)). In other words, this requirement applies to any city that receives more than approximately \$119,047 in MVFT revenue per year. Cities also have the option to place the funds in a capital reserve or special fund to accumulate these resources, so long as the funds are used for paths or trails and used within 10 years.

Timing of Receipts

MVFT revenues credited to cities and towns are subject to a deduction ([RCW 46.68.110](#) (1) – (3)) of 2.83% for state transportation administration and oversight of federal-aid programs, transportation studies and use in the small city pavement and sidewalk account. The remaining MVFT collections are distributed monthly, on the last business day of each month.

If the state does not spend all of the deducted funds, the remaining unexpended funds from the federal-aid program administration and transportation studies will be distributed to all cities and towns in the next biennium and any remaining small city pavement and sidewalk funds will be used for cities and towns with populations less than 5,000 in odd-numbered years for maintenance, repair and resurfacing of streets.

MULTIMODAL FUNDS AND INCREASED MVFT

Quick Summary

- Distributed to all cities and towns on a per capita basis.
- Direct appropriations from the state transportation fund; do not depend on actual fuel sales.
- Revenues are restricted:
 - Multimodal funds may be used for any transportation purpose.
 - Increased MVFT funds must be used for street or highway purposes (including eligible pedestrian, equestrian, or bicycle trails).

RCW: 46.68.126

All cities and towns receive a share of the increases to the state multimodal funds and increased motor vehicle fuel tax (“increased MVFT”) passed by the legislature in 2015 ([RCW 46.68.126](#)). Unlike the regular MVFT distributions (see [Motor Vehicle Fuel Tax \(MVFT\)](#)), the multimodal distributions and increased MVFT funds are direct appropriations from the “connecting Washington” account established within the state motor vehicle fund.

These distribution amounts are not adjusted for inflation and will remain the same each year unless changed by the state legislature. Unlike regular MVFT distributions, these allocations are not impacted by actual fuel tax collections or transportation licensing fees.

Eligibility and Distribution Formula

Multimodal and “increased MVFT” funds are distributed to all cities and towns on a strictly per capita (population) basis. For the most recent distribution estimates, refer to our annual [Budget Suggestions publication](#), released each year at the end of July.

Use of Revenues

These transportation revenues are restricted as follows:

- **Multimodal funds:** May be spent on any transportation purposes ([RCW 47.66.070](#)).
- **Increased MVFT:** May only be spent on “proper road, street, and highway purposes” ([RCW 46.68.070](#)), including pedestrian, equestrian, or bicycle trails meeting the criteria of [RCW 47.30.030](#).

Timing of Receipts

Payments are distributed quarterly, on the last business day of March, June, September, and December.

PUBLIC UTILITY DISTRICT (PUD) PRIVILEGE TAX

Quick Summary

- The state imposes a 2% excise tax, plus 0.02% per kilowatt-hour of self-generated energy, on all public utility districts (PUDs) in lieu of property taxes.
- Revenues are shared with counties, cities, and towns.
- Revenues are unrestricted and may be used for any lawful government purpose.

RCW: [54.28.020\(1\)](#)

All property owned by public utility districts (PUDs), like all other government-owned property, is exempt from property taxes. However, since 1941 public utility districts (PUDs) have been subject to an excise tax in lieu of property taxes. This tax is levied for the privilege of operating facilities for generating and distributing electricity.

The state imposes an excise tax rate of 2% of the gross revenue derived from the sale of distribution of power, plus 0.02% per kilowatt-hour⁶² of the wholesale value of self-generated energy for resale or distribution to consumers by a district ([RCW 54.28.020\(1\)](#)). These revenues are shared with counties and other local taxing districts as described below.

There is also an additional 0.14% excise tax on the PUD's gross revenue ([RCW 54.28.020\(2\)](#)), but those revenues are deposited to the state general fund and are not shared with local governments.

This tax is computed and collected by the Department of Revenue. Of the portion under [RCW 54.28.020\(1\)](#) that is shared with local governments, 41.6% of the revenues are deposited to the state general fund, primarily for the benefit of public schools ([RCW 54.28.040](#) and [RCW 54.28.050\(1\)](#)). The remainder of the 2% base excise tax is distributed to the county or counties in proportion to the gross revenue from sales made within each county, while the 0.02% kilowatt-hour tax is distributed to the county or counties in which the generating facilities are located.

The county treasurer, in turn, must further distribute those funds to the county general fund, county road district, and each city or town within the county⁶³ according to the manner the county legislative body deems "most equitable" ([RCW 54.28.090](#)). However, the statute specifies that each city and town within the county must receive an amount equal to at least 0.75% of the PUD's gross revenues received from the sale of electricity within that city or town.

There is a separate excise tax for certain thermal electric generating facilities located on a federal reservation under [RCW 54.28.025](#), which has a different population-based revenue-sharing formula under [RCW 54.28.055](#). The thermal generating facilities tax is distributed to counties, cities, library districts, and fire protection districts.

⁶² Rather than "0.02% per kilowatt-hour," the statute actually reads "five percent of the first four mills per kilowatt-hour." A "mill" is an older term referring to 1/1,000th of a currency unit. Four mills is equivalent to 4/1,000, or .004. Five percent (.05) of .004 equals 0.0002 or 0.02%.

⁶³ The statute says the county must distribute the money to "each taxing district in the county, other than school districts." [RCW 54.28.010](#) defines "taxing district" to mean counties, cities, towns, school districts, and road districts.

Use of Revenues

PUD privilege tax revenues are unrestricted and may be used for any lawful governmental purpose. [RCW 54.28.100](#) simply reads, “all moneys received by any taxing district shall be used for purposes for which state taxes may be used under the provisions of the state constitution.”

Timing of Receipts

The state treasurer distributes these revenues to the respective counties during the month of June each year ([RCW 54.28.040](#) and [RCW 52.28.050](#)), and the county distributes the city’s portion shortly thereafter.

STREAMLINED SALES TAX (SST) MITIGATION PAYMENTS

Quick Summary

- State distribution to cities that lost sales tax revenue when the state switched to a destination-based sales tax in 2008.
- Payments were set to expire October 1, 2019 for all cities; however, the legislature extended payments for some cities through June 30, 2021.

RCW: [82.14.495 – .500](#)

Streamlined sales tax (SST) mitigation payments ([RCW 82.14.495 – .500](#)) are distributions from the state to help compensate local jurisdictions for sales tax revenues that were lost when the state switched from an origin-based to a destination-based (“streamlined”) sales tax for delivered goods in 2008. This particularly affected cities with significant warehousing or distribution centers.

However, the Marketplace Fairness Act ([EHB 2163](#), enacted in 2017) – which increased sales tax revenues, particularly for Internet sales and remote sellers – is also phasing out SST mitigation payments. As cities receive increased sales tax revenues from the Act, their SST mitigation payments are being reduced by a corresponding amount. All mitigation payments were set to expire October 1, 2019, but the 2019-2021 state operating budget ([ESHB 1109, Section 722](#)) extended the deadline to June 30, 2021 for those cities that received at least \$50,000 in SST mitigation payments in calendar year 2018.

Many cities that were previously receiving SST mitigation payments are no longer receiving them due to the increased sales tax revenues and will not be adversely affected when the program is eliminated. However, there are a few cities in particular where the expiration of SST mitigation payments will have a significant budgetary impact.

Use of Revenues

SST mitigation payments are unrestricted and may be used for any lawful governmental purpose.

Other Revenue Sources

FRANCHISE FEES

Quick Summary

- Franchise agreements allow utility providers to install and maintain equipment within rights-of-way.
- Franchise fees are generally limited to the recovery of administrative costs.
- Exception is cable TV, which may be assessed an annual fee up to 5% of gross revenues, minus certain non-monetary in-kind contributions.

RCW: 35.21.860

Franchise agreements are contracts between the city and public or private utility providers that allow the utility providers to use the city's rights-of-way to deliver their services. A franchise agreement allows the utility provider to install, maintain, and repair utility infrastructure within the right-of-way while minimizing interference with public use of the right-of-way. Typically, these agreements last for 10 to 20 years or longer.

Cities may impose franchise fees on utility providers to recoup the costs of administering the franchise. [RCW 35.21.860](#) limits electricity, natural gas, and telephone franchise fees to actual administrative expenses. These franchise fees are not revenue generators as they are in some states. In addition, cities and towns may impose franchise fees to recover administrative costs on sewer and water.⁶⁴ A reasonable franchise fee may be imposed on solid waste providers.

Cable TV Franchise Fees

Cable television franchise agreements are governed by federal law rather than state law and are negotiated with the cable company. Cable TV franchise fees may be levied at a rate up to 5% of gross revenues from the franchise area every year, regardless of the administrative costs ([47 U.S.C. §542\(a\)](#) and (b)).

However, effective September 26, 2019, cities must count most non-monetary "in-kind" contributions toward the maximum 5% fee due to a new Federal Communications Commission order ([FCC 19-80](#)). There is an exception for in-kind contributions for public, educational, or governmental (PEG) channel capital costs, which are not counted toward the 5% cap. However, ongoing PEG operations and maintenance costs are not exempt and must be counted toward the 5% cap. Appeals and further litigation on this issue are expected.

Use of Revenues

Cable TV franchise fees are unrestricted and may be used for any lawful governmental purpose. All other franchise fees are intended to recover administrative costs only.

⁶⁴ *City of Lakewood v. Pierce Cty.*, 106 Wn. App. 63, 23 P.3d 1, (2001)

IMPACT FEES – GROWTH MANAGEMENT ACT (GMA)

Quick Summary

- Fee charged to developers to mitigate the impacts on infrastructure and capital facilities because of increased demand resulting from new development.
- Revenues are restricted and may only be used for streets, parks, schools, and/or fire protection.
- May only be imposed by cities and towns planning under the Growth Management Act.
- Must generally be expended within 10 years of receipt.
- Does not require voter approval.

RCW: [82.02.050 – .110](#)

Impact fees are one-time charges assessed by a local government against real estate developers to help pay for new or expanded public facilities and infrastructure that will directly address the increased demand for services created by new development.

[RCW 82.02.050 – .110](#) authorize any city or town fully planning under the Growth Management Act (GMA) to impose impact fees for:

- Public streets and roads
- Publicly owned parks, open space, and recreation facilities
- School facilities
- Fire protection facilities

Impact fees may be approved by the legislative body and do not require voter approval. Any jurisdiction that is *not* fully planning under GMA is not authorized to impose impact fees under these statutes.

Use of Revenues

Impact fees help mitigate the impacts of growth associated with a specific development area. Impact fees may only be imposed for “system improvements” – public capital facilities within the city’s capital facilities plan that meet all three of the following criteria (see [WAC 395-196-850](#)):

- Are designed to provide service to the community at large,
- Are reasonably related to the new development, and
- Will benefit the new development.

Impact fees *cannot* be used to fund operating and maintenance costs or private capital facilities. The impact fees cannot exceed a proportionate share of the system improvements, and cities cannot rely solely on impact fees to fund the improvements and must use additional funding sources ([RCW 82.02.050](#)).

[RCW 82.02.090](#) states that the revenues may only be used for:

- **Transportation:** Transportation impact fees must be used for “public streets and roads.” It is unclear whether these impact fees may be used to fund multimodal improvements, but such use is probably acceptable as long as the transportation improvement is located within the street right-of-way (such as

bus lanes, sidewalks, or bike lanes). However, it is doubtful that impact fees could pay for transportation equipment (such as buses or vanpool vehicles) or projects outside the right-of-way. And since impact fees are restricted to capital facilities, they cannot be used to fund operations and maintenance costs or transportation studies.

- **Parks:** Park impact fees must be used for “publicly owned parks, open space, and recreation” facilities. Many cities in Washington only charge park impact fees to residential construction or the residential portion of a mixed-use building/development, but a few also charge commercial or industrial developments, since employees (and not just residents) can directly benefit from nearby parks and recreational facilities.
- **Schools:** School impact fees must be used for “school facilities.” Typically, school impact fees apply only to residential construction or the residential portion of a mixed-use building/development. School districts are responsible for expending the impact fees, but only cities, towns, and counties are authorized to collect them. As a result, school impact fees require cooperation between school districts and the cities, towns, or counties administering the impact fee program, typically through interlocal agreements that specifically identify each party’s role.
- **Fire Protection:** Fire impact fees must be used for “fire protection facilities.” Since state law provides no further statutory or administrative definitions, some jurisdictions have taken it upon themselves to define “fire protection facilities” in their own municipal codes.

Impact fees must be expended or encumbered within 10 years of receipt, unless there is an “extraordinary and compelling reason” for fees to be held longer, which must be documented in writing by the governing body ([RCW 82.02.070](#)).

Impact fees may not be used to correct existing deficiencies. For instance, a city may use fire impact fees to help build a new fire station serving the new development, but it may not use the impact fees to upgrade an outdated fire station elsewhere in the city that will not directly serve the development.

However, an impact fee ordinance “may provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies” ([RCW 82.02.060\(8\)](#)). For example, if a public works maintenance facility was designed and constructed to address both existing deficiencies (say, 60%) and future growth needs (say, 40%), impact fees could be used to pay for up to 40% of the debt service on the bond issued for that facility.

Determining Impact Fee Rates

Local governments must establish a rate schedule for each type of development activity that is subject to impact fees, specifying the fee to be imposed for each type of system improvement ([RCW 82.02.060](#)). The schedule must be based on a formula or other calculation that incorporates, among other things:

- The cost of public facilities necessitated by new development;
- The cost of existing public facilities improvements;
- Adjustments to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development;
- The availability of other public funding sources; and
- The method by which public facilities improvements were financed.

These rate studies should be updated periodically to reflect changes in the cost of facilities. While local governments are not required to hold a public hearing before adopting or increasing impact fees, it may be prudent to do so, especially if the decision might be controversial.



Practice Tip: Some jurisdictions automatically adjust their impact fees by indexing them to an inflation index, which protects future revenues and can potentially reduce or eliminate the need for the legislative body to go through a formal rate-setting process again. Examples of inflation indexes include, but are not limited to, the Consumer Price Index (CPI-U or CPI-W) and the WSDOT Transportation Construction Cost Index.

Local governments may provide exemptions for low-income housing and other development activities with “broad public purposes” ([RCW 82.02.060\(3\)](#)). Some jurisdictions reduce or waive certain types of impact fees for certain types of development, either to incentivize development or because the development places no significant burden on existing facilities. However, any exemption for school impact fees that would otherwise be distributed to a school district must first be approved by the school district.

Timing of Receipts

Developers must generally pay impact fees to the city before construction begins. The money must be earmarked and retained in a special interest-bearing account, with a separate account for every type of facility for which the fees are collected (transportation, fire, etc.). Each city that imposes impact fees must provide an annual report on each of the accounts showing the source and amount of revenues, as well as the improvements financed with the revenue ([RCW 82.02.070](#)).

However, effective 2016, cities, towns, and counties must adopt an impact fee deferral system for small single-family residential developments, allowing developers to pay the fees after construction instead of beforehand ([RCW 82.02.050\(3\)](#)).

[RCW 82.02.080](#) requires each jurisdiction to refund the impact fees, plus earned interest, to the developer if:

- The impact fee is not expended or encumbered within 10 years of collection;
- The jurisdiction ends its impact fee program and the funds have not yet been expended or encumbered; or
- The developer does not proceed with the proposed development activity and requests a refund.

IMPACT FEES – LOCAL TRANSPORTATION ACT (LTA)

Quick Summary

- Fee charged to developers to mitigate the impacts on infrastructure and capital facilities because of increased demand resulting from new development.
- Revenues are restricted and may only be used for transportation.
- May be imposed by any city, but typically impact fees are assessed under the Growth Management Act rather than LTA.
- Does not require voter approval.

RCW: [Chapter 39.92 RCW](#)

Impact fees are one-time charges assessed by a local government against real estate developers to help pay for new or expanded public facilities and infrastructure that will directly address the increased demand for services created by new development.

Any city, county, or transportation benefit district – regardless of whether or not it is planning under the Growth Management Act (GMA) – may impose transportation impact fees under the Local Transportation Act (LTA), [chapter 39.92 RCW](#). These impact fees may be approved by the legislative body and do not require voter approval.

LTA was enacted in 1988 but was followed just two years later by GMA, which provided much broader authority for “fully planning” GMA jurisdictions to impose impact fees for parks, schools, and fire protection in addition to transportation (see [Impact Fees – Growth Management Act \(GMA\)](#)). As far as we are aware, all jurisdictions that currently impose impact fees in Washington do so under the authority of GMA, not LTA.

Use of Revenues

LTA impact fees may only be used to mitigate off-site transportation impacts that are a direct result of the proposed development, pursuant to a local transportation program that complies with [RCW 39.92.030](#) and [RCW 39.92.040](#).

INVESTMENTS (INTEREST EARNINGS)

Quick Summary

- Cities and towns may invest excess funds not immediately needed for operations.
- Interest earned on the investments may be used by the fund that invested, for purposes allowed within that fund.
- Earnings may or may not be restricted, depending on the revenue source.

RCW: 35.39.034 and **35A.40.050**

[RCW 35.39.034](#) and [RCW 35A.40.050](#) allow cities to invest excess monies to generate additional income. Funds may either be invested in individual investment portfolios, or multiple funds may be commingled into a common investment portfolio.

State law provides various restrictions on what types of investments can be made. If your city will be investing excess funds, you should consider developing and adopting an investment policy to spell out your city's goals and responsibilities. While the entire purpose of investing funds is to generate a return on the investment (yield), local governments should be careful to prioritize liquidity (the ability to access funds when needed without loss) and safety of the investment over yield. For guidance, see MRSC's [Investment Policies](#) webpage.

Use of Revenues

All income derived from such investments must be apportioned and used for the benefit of the participating funds, or – unless otherwise restricted by law – the city may adopt an ordinance or resolution that authorizes the apportionment of the investment earnings to the general fund. If the interest has been transferred into the general fund, it may be used for any lawful governmental purpose.

However, [RCW 35.39.034](#) provides that “funds derived from the sale of general obligation bonds or revenue bonds or similar instruments of indebtedness shall be invested, or used in such manner as the initiating ordinances, resolutions, or bond covenants may lawfully prescribe.”

Although there is no such proviso in [RCW 35A.40.050](#), bond covenants and debt provisions still determine the allocation of interest from bonds. If you have questions, check with your bond counsel.

In addition, it has generally been interpreted by SAO that interest earnings on excess “restricted” resources are to be used for the benefit of the restricted fund. See the BARS manuals, section 3.2.3 on Sweeping Interest and Investment Returns into General Fund (see [Cash Basis manual](#) and [GAAP manual](#)).

PARKING METERS

Quick Summary

- Any city may impose parking meter fees.
- Revenues may be used for administrative costs, parking studies, and acquisition and maintenance of off-street parking facilities.

WAC: [308-330-650](#)

Any city may impose parking meter fees, which can promote parking turnover, ration space where demand exceeds supply, provide short-term parking spaces for shopping or personal errands, improve traffic circulation, and provide revenue for the city.

There is no specific statute authorizing parking meter charges, but in 1941 the state Supreme Court upheld a Spokane ordinance providing for the installation and maintenance of parking meters for regulating traffic on the city's streets as a valid exercise of the city's police power (*Kimmel v. City of Spokane*, 7 Wn.2d 372 (1941)).

Use of Revenues

Parking meter revenues should be used to cover the administrative costs associated with meter maintenance and installation, fee collection, and enforcement by city officials. Revenue in excess of this amount may be used for parking studies and acquisition and operation of off-street parking facilities (see [WAC 308-330-650](#)).⁶⁵

⁶⁵ In *Kimmel v. City of Spokane*, 7 Wn.2d 372 (1941), the Court did not concern itself directly with the revenue-producing character of parking meters. The Court said that it would not look behind the regulatory purpose declared in the ordinance, in the absence of evidence tending to show that the declaration was false and that the ordinance was actually a revenue measure.

SURPLUS TRANSFERS FROM UTILITIES AND LIDS

Quick Summary

- In limited situations, cities may transfer surplus funds from municipal utilities or a local improvement district (LID) guaranty fund into the general fund.
- Surplus transfers require financial analysis of both current and future needs.

RCW: 35.37.020 and **35.27.510**

Cities and towns are frequently seeking revenue sources to mitigate declining income, which often leads to a discussion of whether the fund balances in city-owned utility funds or, for some, the local improvement district (LID) guarantee funds are considered surplus and therefore available for transfer to the general fund.

The first consideration is, what is the definition of “surplus”? The Merriam-Webster dictionary defines surplus as “the amount that remains when use or need is satisfied” or “an excess of receipts over disbursements.” The SAO BARS manuals (see [Cash Basis](#) and [GAAP](#)) define surplus in Item 3.9.3.10 as follows:

The amount by which operating revenues exceeds operating expenses. When determining the available surplus in a proprietary fund, the following must first be deducted from the proprietary fund balance: capital asset replacement cost, future capital expansions and improvements and any legally restricted resources.

Surplus Transfers from Municipal Utilities

Municipal utilities should not generally have funds in excess of the amount they need to provide their services. Rates are supposed to be set at a level necessary to cover costs, which include operations, maintenance, debt service and capital asset replacement, expansion, and improvements. Municipal utilities are not intended to generate profits above their costs, but occasionally there may be a time when a utility finds itself with surplus funds. When that happens, a city may be able to transfer this surplus from the utility fund to the general fund. We say this cautiously because there are very few circumstances where a municipally owned utility would have a surplus.

[RCW 35.37.020](#) and [RCW 35A.37.010\(7\)](#) provide that every city and town having a population of less than 20,000 must transfer any utility fund surplus to the general fund, except for any funds the council finds necessary for extending or repairing the infrastructure, paying debt service, or establishing a sinking fund. Note that these statutes also require that any *deficit* in a utility fund must be covered by a transfer from the general fund.

Towns also have a second statute, [RCW 35.27.510](#), that authorizes transfer of a utility surplus under the following conditions: if the utility service is free of debt, if a depreciation fund satisfactory to the state auditor has been created, if rates are set at the lowest possible level, and if the fixing of rates is governed by contract with a utility service supplier, then the mayor and council may transfer surplus funds with a unanimous vote. Since most towns do not contract for their utility services, this additional statute is generally not applicable.

Surplus Transfers from LID Guaranty Funds

Cities and towns frequently have local improvement districts (LID) that require that the city establish a local improvement guaranty fund for the purpose of guaranteeing the payment of bonds and other obligations of the LID.

A city may be able to transfer assets from an LID guaranty fund to the general fund if the city or town treasurer has certified that the LID guaranty fund has sufficient funds on hand to meet all outstanding obligations of the fund that are anticipated to be presented ([RCW 35.54.095](#)). Any transfer may not reduce the remaining cash in the guaranty fund to less than 10% of the outstanding obligations.

TOURISM PROMOTION AREA FEES

Quick Summary

- Any city or town may form a tourism promotion area and impose charges up to \$2 per room per night. Effective June 11, 2020 to July 1, 2027 the city/town may impose an additional fee up to \$3 per room per night.
- Only applies to lodging businesses with 40 or more rooms.
- May establish up to six different lodging classifications, with different rates in each.
- Revenues must be used for tourism promotion to increase the number of tourists to the area.
- Does not require voter approval, but requires support from local lodging businesses and may be repealed if a majority of lodging businesses submit a written petition.

RCW: [Chapter 35.101](#)

The legislative body of any city, town, or county may form a tourism promotion area (TPA) to generate revenue for tourism promotion ([chapter 35.101 RCW](#)). Previously, this authority was limited to counties over 40,000 population and the cities and towns within such counties, but effective June 11, 2020 the state legislature removed the population requirement.

Tourism promotion area fees are different than lodging taxes (see [Lodging Tax \(Hotel/Motel Tax\)](#)) and may be imposed in addition to lodging taxes. Forming a tourism promotion area requires support from the local lodging industry, and the petition to form the TPA must contain the signatures of people who operate lodging taxes within the proposed area and who would pay at least 60% of the proposed charges.

A TPA may include the entire city or only a portion, and multiple jurisdictions may establish a joint TPA through interlocal agreement. In a county with a population of one million or more – currently, only King County – the TPA must be formed by two or more jurisdictions acting under an interlocal agreement, with the exception of Federal Way which is authorized to form a TPA by itself.

Within the tourism promotion area, the legislative body may impose a charge of up to \$2 per room per night on lodging businesses with 40 or more rooms. The legislative body may establish up to six different lodging classifications, sometimes referred to as “zones,” with different rates in each. The classifications must be based on geographic location, number of rooms, or room revenue.

Lodging businesses with less than 40 rooms are exempt and may not be assessed, and some jurisdictions have established other exemptions by policy (typically by creating a separate classification for the exempted businesses and establishing a fee of zero dollars for that classification).

Effective June 11, 2020 the legislative body may impose an additional charge of up to \$3 per room per night if it has secured the signatures of the persons who operate lodging businesses who would pay 60% or more of the proposed charges. This additional \$3 nightly charge expires July 1, 2027. ([ESSB 6592, Section 2.](#))

Any tourism promotion area fee imposed after January 1, 2020 must be repealed if a majority of the lodging businesses assessed the charges petitions to the legislative body in writing to remove the charge. The legislative authority may determine the timing of when to remove the charge so that the effective date of the expiration will not adversely affect existing contractual obligations, not to exceed 12 months. Any fee in place

as of January 1, 2020 is not subject to this provision unless the jurisdiction increases the charge under Section 2 of ESSB 6592.

Use of Revenue

Effective June 11, 2020, the legislature has slightly modified the use of revenues. Previously, the revenues had to be used “to promote tourism,” but the new language requires the revenues to be used “to promote tourism that increases the number of tourists to the area” ([RCW 35.101.130](#)).

[RCW 35.101.010\(4\)](#) defines "tourism promotion" as “activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists and operating tourism destination marketing organizations.”

The city council has sole discretion as to how the revenues will be spent to promote tourism – unlike lodging taxes, which for many jurisdictions depend on recommendations from the lodging tax advisory committee (LTAC). However, the city council may appoint an existing advisory board or create a new advisory board to make recommendations on the use of the TPA revenues if desired.

The 2020 legislation also added a definition of “tourist” ([RCW 35.101.010\(5\)](#)):

[A] person who travels for business or pleasure on a trip:

(a) Away from the person's place of residence or business and stays overnight in paid accommodations;

(b) To a place at least fifty miles away one way by driving distance from the person's place of residence or business for the day or stays overnight. However, island communities without land access are exempt from the mileage requirement under this subsection (5)(b); or

(c) To another country or state outside of the person's place of residence or business.

The legislative authority may contract with tourism destination marketing organizations or other similar organizations to administer the operation of the area.

Timing of Receipts

Lodging businesses collect the charges and remit them to the Department of Revenue, which deposits the revenues into the Local Tourism Promotion Account. The state treasurer distributes money in the account monthly to the legislative authority on whose behalf the money was collected.

TRAFFIC AND PARKING FINES

Quick Summary

- State Supreme Court establishes fines for traffic infractions, but revenues are shared with city where infraction occurred.
- Cities can establish their own parking fines.
- Revenues may generally be used for any lawful governmental purpose.

RCW: 46.63.110(3) and others

Traffic Infractions

The state Supreme Court establishes the schedule of fines for traffic infractions ([RCW 46.63.110\(3\)](#)); see Infraction Rules for Courts of Limited Jurisdiction (IRLJ) [Rule 6.2](#)). However, cities share in the revenue from infractions committed within their boundaries. After the fines are collected by the municipal or district court, 32% of the non-interest money is sent to the state. The remainder may be deposited in any city fund, and most jurisdictions put this money into the general fund.

The interest is split evenly between the state public safety and education account, the state judicial information system, the city general fund, and the city general fund to be dedicated to fund local courts.⁶⁶

Parking Fines

A city has complete control over setting the fines for any violation of its parking ordinances. IRLJ [Rule 6.2\(c\)](#) states:

This schedule does not apply to penalties for parking, standing, stopping, or pedestrian infractions established by municipal or county statute. Penalties for those infractions are established by statute or local court rule, but shall be consistent with the philosophy of these rules.

A city may also charge a fine of up to \$25 for failure to pay the parking ticket in the time prescribed by law ([RCW 46.63.110\(4\)](#)).

Use of Revenues

Traffic and parking fines are unrestricted and may be used for any lawful governmental purpose. However, as noted above a portion of the interest on traffic infractions must be deposited to the general fund to fund local courts.

⁶⁶ See [RCW 3.50.100\(5\)](#) for municipal courts except Seattle, [RCW 35.20.220\(5\)](#) for the Seattle municipal court, and [RCW 3.62.040\(6\)](#) for district courts.

TRANSPORTATION BENEFIT DISTRICT VEHICLE LICENSE FEES



Initiative 976, approved by state voters in November 2019, repeals the authority of TBDs to impose vehicle license fees. Some jurisdictions have sued in an attempt to prevent the initiative from taking effect while they challenge its constitutionality. Lower courts have largely upheld the initiative, which has been appealed to the state Supreme Court. If Supreme Court also upholds the initiative, affected cities will have to refund any TBD vehicle license fees collected since the effective date of the initiative (December 5, 2019). TBD sales taxes and other forms of TBD revenues remain in effect and are not impacted by I-976.

Any city or town may form a transportation benefit district (TBD) under [chapter 36.73 RCW](#) to raise revenues for transportation purposes. TBDs may generate revenue through a variety of means, but the two most popular funding mechanisms are a voted sales tax up to 10 years and 0.2% (see [Transportation Benefit District Sales Tax](#)) and a vehicle license fee (“car tab fee”) up to \$100 as described below.

Any TBD (or city, if the city has “assumed” the TBD under [chapter 36.74 RCW](#)) may impose a vehicle license fee up to \$50 without voter approval, or up to \$100 with voter approval ([RCW 82.80.140](#), [RCW 36.73.040\(3\)\(b\)](#)), in addition to any vehicle license fees charged by the state.

Certain vehicles are exempt under [RCW 82.80.140\(6\)](#), including campers, farm vehicles, mopeds, off-road and non-highway vehicles, snowmobiles, and private use single-axle trailers.

The TBD vehicle license fee may be imposed in addition to the TBD sales tax if desired, and several jurisdictions have imposed both concurrently. It is worth noting that these two revenue options are imposed upon different sources – TBD vehicle license fees are paid solely by city residents who own vehicles, while TBD sales taxes are paid by anyone who makes retail purchases within the city. The amount of revenue a city can generate with each option will also vary depending on the rates imposed, the local economy, and the number of registered vehicles.

Non-Voted Vehicle License Fees Up to \$50

The district may only impose a non-voted vehicle license fee up to \$20 initially. After a \$20 fee has been in effect for at least 24 months, the district may increase the fee up to \$40. After a \$40 fee has been in effect for at least 24 months, the district may increase the fee up to the maximum \$50. However, the portion of the fee above \$40 is subject to potential referendum as provided in [RCW 36.73.065\(6\)](#), even if your city has not otherwise adopted powers of initiative and referendum.

If a district imposes or increases its non-voted vehicle license fee that, when combined with fees previously imposed by another district within its boundaries, exceeds \$50, the district must provide a credit so that the combined vehicle fee does not exceed \$50.

Many cities have established non-voted TBD vehicle license fees.

Voted Vehicle License Fees Over \$50

Any vehicle license fee higher than the amounts listed previously, up to a maximum of \$100, must be approved by a simple majority of voters. The measure may be placed on the ballot at any special, primary,⁶⁷ or general election. According to MRSC's [Local Ballot Measure Database](#), Seattle is the only jurisdiction that has successfully passed a voted vehicle license fee, and even then its first attempt was unsuccessful. Other jurisdictions that have unsuccessfully attempted voted vehicle license fees in the past include King County and the cities of Bremerton, Burien, and Edmonds.⁶⁸

Use of Revenues

The revenues may be used for eligible “transportation improvements” listed in a local, regional, or state transportation plan in accordance with [chapter 36.73 RCW](#). Improvements can range from roads and transit service to sidewalks and transportation demand management. Construction, maintenance, and operation costs are eligible.

However, [RCW 82.80.140](#) states that the revenue may not be used for passenger-only ferry improvements unless the vehicle license fee is approved by voters.

67 [RCW 36.73.065\(1\)](#) states that the tax must be submitted at “a general or special election,” which at first glance might seem to rule out the August primary election. However, [RCW 29A.04.321\(2\)](#), which establishes the election schedule for local governments, authorizes the county to call up to four “special elections” each year, including the primary election. So for these purposes, “special election” includes the primary election.

68 Bremerton, Burien, and Edmonds all attempted voted vehicle license fees in 2008-2009 under prior legislation, when non-voted fees were capped at \$20. The legislation has since been amended to allow non-voted vehicle license fees up to \$50.

UTILITY RATES AND CHARGES

Quick Summary

- Any city that has established a utility must set an appropriate rate to recover cost.
- Revenues must be used for specified utility purpose.

RCW: [35.92 RCW](#); [35A.80 RCW](#)

Cities and towns frequently own and manage their own water and sewer utility systems, and some also have stormwater, electric, or garbage utilities. Each of these utilities is considered a “proprietary” activity, which is to say that it functions as a business activity separate from the general governmental activities. (See [chapter 35.92 RCW](#) and [chapter 35A.80 RCW](#) regarding municipal utilities.)

This guide is not intended to address the complexities of proper rate-setting but only to speak to the overarching concepts of utility rates and charges.

Utility Rate Setting

Ideally, all utility rates, system charges, and service fees should be set to recover the cost of operating the systems, in addition to charging for replacing equipment and adding or expanding facilities to meet regulations, future service demands, and setting aside for unforeseen events such as natural disasters.⁶⁹ Revenues for fees and charges must meet the expenses of the system, in addition to setting aside reserves.

Careful and accurate rate and service fee setting will assure that the utility operates in a fiscally responsible manner. Consideration should be given to the following areas when setting rates:

- Operating costs (wages, benefits, engineering fees, office supplies, chemicals, lighting, heat, repairs, and other daily operations);
- Insurance;
- State and local taxes;
- Debt service (principal and interest);
- Planning and engineering;
- Reserves for improvements, expansions, and upgrades; and
- Reserves for unforeseen events such as natural disasters.

Utility rates should also incorporate the utility’s portion of indirect or “overhead” costs incurred by the city, such as payroll administration, human resources, information technology, and shared facilities and equipment. See MRSC’s webpage on [Cost Allocation](#) for more guidance on overhead costs.

Use of Revenues

Utility rates and charges are restricted to the use by the utility for its operations, including all of those costs listed above.

⁶⁹ See *Uhler v. Olympia*, 87 Wash. 1 (1915); *Carstens v. Public Utility District No. 1*, 8 Wn.2d 136 (1941)

OTHER FEES AND CHARGES

Sprinkled throughout the RCWs is authority for cities to levy fees and charges to cover the cost of providing services or programs and regulatory activities. For example, fees may be charged for:

- Animal licensing⁷⁰
- Concealed pistol license permits⁷¹
- Fireworks retail and display permits⁷²
- Parks, recreation, and cultural facilities and programs⁷³
- Processing of development and building permit applications⁷⁴
- Public records copying charges⁷⁵
- Street use permits⁷⁶

This list is not comprehensive, and there are no doubt other examples.

The general guiding principle for these fees and charges is that they may be set at a level that recovers all the direct and indirect costs associated with the activity, including administrative overhead. (See MRSC's webpage on [Cost Allocation](#) for guidance to help make sure you are fully and accurately accounting for indirect or "overhead" costs such as payroll administration, human resources, facility and equipment expenses, and information technology.)

If fees more than recover costs, they then become more like taxes, and cities need specific statutory authority to levy taxes.

70 Animal licensing: see [RCW 35.23.440\(11\)](#) for second class cities, [RCW 35.27.370\(7\)](#) for towns, and [RCW 35A.82.020](#) for code cities.

71 Concealed pistol licenses: see [RCW 9.41.070](#).

72 Fireworks permits: see [RCW 70.77.260](#) and [RCW 70.77.555](#).

73 Parks, recreational, and cultural facilities and programs: see [RCW 35.21.020](#) for cities and towns and [RCW 35A.27.010](#) and [RCW 35A.67.010](#) for code cities.

74 Development and building permit applications: see [RCW 19.27.100](#) and [RCW 82.02.020](#).

75 Copying charges: see [RCW 42.56.120](#).

76 Street use permits: see [RCW 35.22.280\(7\)](#) for first class cities, [RCW 35.23.440\(33\)](#) for second class cities, [RCW 35.27.370\(4\)](#) for towns, and [RCW 35A.11.020](#) for code cities.

Special Taxing Districts

Cities also have the option to form certain special taxing districts, generally coextensive with the city's boundaries, to generate additional revenue or shift funding sources.

In addition, cities can annex into existing library districts and fire protection districts, or join with other fire protection jurisdictions to form regional fire authorities, all of which can have revenue impacts especially in the area of property tax levy rates.

Some of the special taxing districts may be organized as completely separate municipal entities – in other words, the city can “spin off” certain functions like parks, libraries, or fire protection to a separate governmental entity with its own legislative body and staff. In other cases, the creation of the special taxing district may be an extension of the city's existing operations. For instance, a newly formed entity might be a legally separate municipal entity, but it might be governed by city council in an “independent and ex officio” capacity. In these scenarios, the city staff perform the functions of the special taxing district through an interlocal agreement with the city.

This chapter will briefly describe the various options and their potential revenue implications.

FIRE PROTECTION DISTRICT

Any city with a population of 300,000 or less may annex into a fire protection district within “reasonable proximity” under [chapter 52.04 RCW](#). Annexation may require voter approval with a simple majority.

As an alternative to annexation, new legislation in 2017 allows any city or town to establish a fire protection district coextensive with the city's boundaries ([RCW 52.02.160](#)). This is still a new option, and as of 2019 no city has formed a fire protection district. The formation of the district requires voter approval with a simple majority unless the district will be initially funded by benefit charges, in which case approval requires a 60% supermajority.

Fire protection districts are funded primarily by property tax levies up to \$1.50 per \$1,000 assessed value, which will impact the city's general fund levy rate (see [Regular Levy \(General Fund\)](#)).

Other fire protection district funding options including fire benefit charges, EMS levies, multi-year excess levies for operations and maintenance, and general obligation bonds for capital purposes.

LIBRARY DISTRICT

Any city or town with a population of 300,000 or less may annex into a library district lying contiguous to the city ([RCW 27.12.360](#)). Annexation may require voter approval with a simple majority.

Library districts are funded primarily by a property tax levy up to \$0.50 per \$1,000 assessed value, which will impact the city's general fund levy rate (see [General Fund Levy](#)).

METROPOLITAN PARK DISTRICT

Any city or town may form a metropolitan park district (MPD) under [chapter 35.61 RCW](#) to manage, control, improve, maintain, or acquire park and recreation facilities. The formation of an MPD requires voter approval with a simple majority vote. MPDs are funded primarily by a regular property tax levy up to \$0.75 per \$1,000 assessed value, which is approved as part of the initial ballot measure establishing the district.

An MPD may be formed with a separately elected legislative body, or the city council may be designated to serve in an ex officio capacity as the board of metropolitan park commissioners if the district's boundaries are the same as the city's.

PUBLIC FACILITIES DISTRICT

Most cities may establish a public facilities district (PFD) under [chapter 35.57 RCW](#) for the purpose of constructing, operating, and maintaining "regional centers," defined in [RCW 35.57.020](#) as a convention, conference, or special events center, or any combination of facilities and related parking facilities, whose construction or rehabilitation costs are at least \$10 million including debt service. The formation of a PFD does not require voter approval, but some PFD revenue sources do require voter approval.

PFDs are funded primarily by sales taxes, user fees and charges, admission and parking taxes, general obligation bonds, and revenue bonds.

REGIONAL FIRE AUTHORITY

Any city may form a regional fire protection service authority under [chapter 52.26 RCW](#) with at least one other "fire protection jurisdiction" (defined as a city, town, fire district, port district, municipal airport, regional fire protection service authority, or Indian tribe) within "reasonable proximity." Forming a regional fire authority requires voter approval with a simple majority vote unless the district will be initially funded by benefit charges or 60% voter-approved property taxes, in which case approval requires a 60% supermajority.

Regional fire authorities are funded primarily by property tax levies up to \$1.50 per \$1,000 assessed value, which will impact the city's general fund levy rate (see [Regular Levy \(General Fund\)](#)).

Other regional fire authority funding options including fire benefit charges, EMS levies, general obligation bonds, and one-year excess O&M levies.

TRANSPORTATION BENEFIT DISTRICT

Any city may establish a transportation benefit district (TBD) to generate revenue for specific transportation projects ([chapter 36.73 RCW](#)). Forming a TBD does not require voter approval, but some revenue options do require voter approval.

TBD revenue may be used for transportation improvements included in a local, regional, or state transportation plan ([RCW 36.73.015\(6\)](#)). Improvements can range from roads and transit service to sidewalks and transportation demand management. Construction, maintenance, and operation costs are eligible.

The two primary revenue sources for TBDs are a voted sales tax of up to 0.2% with a limit of 10 years (see [Transportation Benefit District Sales Tax](#)) and a vehicle license fee up to \$50 (non-voted) or \$100 (voted) (see [Transportation Benefit District Vehicle License Fees](#)). However, Initiative 976, approved by voters in November 2019, repeals the authority of TBDs to impose vehicle license fees. Several jurisdictions have sued to challenge the initiative's constitutionality.

Other potential funding sources include a border area fuel tax for TBDs that include a Canadian border crossing (see [Border Area Fuel Tax](#)), general obligation bonds (see [G.O. Bond Excess Levies \(Capital Purposes\)](#)), one-year excess levies (see [Excess Levies \(Operations & Maintenance\)](#)), vehicle tolls, local improvement districts, and transportation impact fees (see [Impact Fees – Local Transportation Act \(LTA\)](#)), but note that these impact fees are different than the impact fees allowed under the Growth Management Act).

TBDs may either be managed as a separate quasi-municipal entity governed by city council in an independent and ex officio capacity, or the TBD powers and authority can be “assumed” by the city under [chapter 36.74 RCW](#), in which case it will be folded into the city’s transportation operations and cease to be a legally separate entity.

TBDs may also include other cities and counties, as well as port and transit districts, through interlocal agreement ([RCW 36.73.020\(2\)](#)).

Appendices:

Major Revenue Sources by Program Area

This appendix lists the major revenue sources for cities and towns in Washington State, divided into the following program areas:

- Unrestricted revenues – may be used for any lawful governmental purpose
- Affordable housing
- Arts, science, and cultural programs
- Capital projects and facilities
- Fire and emergency medical services
- Mental health and substance abuse
- Parks and recreation
- Police and criminal justice
- Tourism promotion
- Transportation
- Miscellaneous revenues

Some revenue sources may be used for multiple purposes and are listed here under multiple program areas. We have also provided a brief summary of each revenue source, the eligible cities, whether or not the funding source requires voter approval, and the statutory (RCW) citation.

This appendix focuses on general governmental revenues and does not include fees for cost recovery (such as building permits) or proprietary activities (such as utility charges).

APPENDIX A - UNRESTRICTED REVENUES

The following revenue sources may be used, wholly or partially, for any lawful governmental purpose. However, note that some of these revenue sources could be partially restricted. In addition, any revenue sources requiring voter approval must be used in accordance with the purposes stated in the ballot measure, in which case they may be considered restricted resources rather than unrestricted.

Revenue source	Eligible cities	Description	Voter approval?	RCW
Admission Tax	Any city	Tax of up to 5% of the admission charge for various facilities and events. Revenues may generally be used for any lawful governmental purpose.	No	35.21.280
“Basic” or “First Half” Sales Tax	Any city	Sales tax of 0.5% for any lawful governmental purpose; revenue shared with county.	No	82.14.030(1)
Brokered Natural Gas Use Tax	Any city	Use tax upon brokered natural gas sales that are not otherwise subject to utility tax; rate must be equivalent to city’s utility tax rate. Revenues are unrestricted.	No	82.14.230
Business and Occupation (B&O) Taxes	Any city	Tax upon local businesses. Rate may not exceed 0.2% of gross receipts unless approved by voters or grandfathered in at a higher rate. Revenues are unrestricted. Must comply with statewide “model ordinance.”	No, unless rate is above 0.2%	35.21.710
Business Licenses/ “Head Taxes”	Any city	Normally business license fees are designed to recoup administrative costs only, but some cities generate revenue through variable business license fees based on criteria such as number of employees, hours worked, type of business, or square footage. Revenues may be used for any lawful governmental purpose.	No	35.22.280(32) 35.23.440(8) 35A.82.020 35.27.370(9)
Cable TV Franchise Fee	Any city	Fee upon cable television providers of up to 5% of their gross revenues (minus certain in-kind contributions) within the franchise area. Revenues may be used for any lawful governmental purpose.	No	35.21.860
City-County Assistance (ESSB 6050)	Cities with relatively low per capita assessed values	Quarterly distribution from state to qualifying cities based on per capita property tax receipts, per capita sales tax receipts, and historical MVET backfill. Revenues may be used for any lawful governmental purpose.	No	82.45.230 43.08.290
Excess Levies (Operations & Maintenance)	Any city	1-year property tax levy; may be used for any lawful governmental purpose, but revenues must be spent in accordance with the purpose(s) specified in the ballot measure.	Yes – 60% supermajority	84.52.052, 84.52.054

Appendix A - Unrestricted Revenues - continued

Revenue source	Eligible cities	Description	Voter approval?	RCW
Regular Levy (General Fund)	Any city	Primary source of property tax revenue for cities; may generally be used for any lawful governmental purpose. Maximum levy rate varies between \$1.60 and \$3.825 depending on whether city is annexed to a fire/library district, participated in a regional fire authority, and/or has a pre-LEOFF firefighters' pension fund. May also potentially be increased through "banked capacity" or levy lid lifts.	No, except for levy lid lifts	84.52.043(1)
Leasehold Excise Tax	Any city	Excise tax up to 4% on most leases of tax-exempt properties in lieu of property tax; credited against state and county leasehold excise taxes. May be used for any lawful governmental purpose.	No	82.29A.040
Liquor Excise Tax	Any city	Quarterly distribution from State Treasurer's Office to all cities based on population. At least 2% must be used for approved drug and alcohol treatment programs and 20.23% for public safety programs, but remaining 77.77% may be used for any lawful governmental purpose.	No	82.08.160, 82.08.170
Liquor Profits	Any city	Quarterly distribution from State Treasurer's Office to all cities based on population. At least 2% must be used for approved drug and alcohol treatment program, but remaining 98% may be used for any lawful governmental purpose.	No	66.24.065
"Optional" or "Second Half" Sales Tax	Any city	Sales tax up to 0.5% for any lawful governmental purposes; for most cities, revenue is shared with county.	No	82.14.030(2)
Public Safety Sales Tax	Any city, as long as county has not imposed 0.3% public safety sales tax	Sales tax up to 0.1%. At least 1/3 of revenues must be used for criminal justice and/or fire protection purposes; remainder is unrestricted and may be used for any lawful governmental purpose. Counties have similar authority up to 0.3%. Cities and counties share revenue.	Yes – simple majority	82.14.450
Public Utility District (PUD) Privilege Tax	Cities served by PUDs	PUD properties are exempt from property taxes, but the state imposes an excise tax on PUDs to compensate. Revenue is distributed to counties, which must share some revenues with cities. Revenues may be used for any lawful governmental purpose.	No	54.28.020(1)

Appendix A - Unrestricted Revenues - continued

Revenue source	Eligible cities	Description	Voter approval?	RCW
REET in Lieu of "Second Half" Sales Tax	Any city that has not imposed the 0.5% "second half" sales tax	Excise tax up to 0.5% on real estate sales; may be used for any lawful governmental purpose.	No	82.46.010(3)
Streamlined Sales Tax (SST) Mitigation Payments	Cities that lost sales tax revenue as a result of the switch to a destination-based sales tax in 2008	State distributions to help compensate cities for loss of sales tax revenues when the state switched to a destination-based sales tax. Revenues may be used for any lawful governmental purpose.	No	82.14.495 – .500
Traffic and Parking Fines	Any city	State Supreme Court establishes fines for traffic infractions, but revenues are shared with city where infraction occurred. Revenues may be used for any lawful governmental purpose, but a portion must be dedicated to fund local courts.	No	46.63.110(3)
Utility Taxes	Any city	Tax upon local utility providers. Maximum non-voted rate of 6% of gross operating revenues for certain utilities; rates higher than that require voter approval. Revenues may be used for any lawful governmental purpose.	No, unless rate exceeds 6% for certain utilities	35.21.870

APPENDIX B - AFFORDABLE HOUSING

Revenue source	Eligible cities	Description	Voter approval?	RCW
Affordable Housing Levy	Any city	Property tax levy up to 10 years and \$0.50 per \$1,000 AV to finance affordable housing for very low-income households and affordable homeownership for low-income households.	Yes – simple majority	84.52.105
Affordable Housing Sales Tax	Any city, as long as county has not imposed this sales tax first	Sales tax up to 0.1% for affordable housing and related services, including mental and behavioral health facilities and treatment programs.	Optional	82.14.530
Affordable Housing Sales Tax Credit (HB 1406)	Any city that filed a resolution of intent by January 27, 2020 and enacted its HB 1406 ordinance by July 27, 2020	20-year credit of either 0.0073% or 0.0146% against the state sales tax, depending on whether city has a “qualifying local tax” in place. Revenues may be used for affordable and supportive housing; cities under 100,000 population may also use revenues for rental assistance.	No	82.14.540
Lodging Tax	Any city	Most cities may impose a tax up to 4% on the sale of short-term lodging less than 30 days, of which 2% is a credit against the state sales tax. Revenues must generally be spent for tourism promotion, but may also be used to repay debt for affordable workforce housing near transit stations.	No	67.28.180 and 67.28.181(1)
REET 2	Cities fully planning under Growth Management Act (GMA)	Additional excise tax of 0.25% on real estate sales; some revenues may be used for affordable housing and homelessness through January 1, 2026.	No, except for voluntary GMA cities	82.46.035(2)

APPENDIX C - ARTS, SCIENCE, AND CULTURAL PROGRAMS

Revenue source	Eligible cities	Description	Voter approval?	RCW
Cultural Access Program (CAP) Levy	Any city, as long as county has not imposed this levy first	Property tax levy up to 7 consecutive years for nonprofit cultural organizations. Levy amount may not exceed 0.1% of taxable retail sales; may not be imposed concurrently with CAP sales tax.	Yes – simple majority	84.52.821, chapter 36.160
Cultural Access Program (CAP) Sales Tax	Any city, as long as county has not imposed this sales tax first	Sales tax of up to 0.1% and 7 consecutive years for nonprofit cultural organizations; may not be imposed concurrently with CAP levy.	Yes – simple majority	82.14.525, chapter 36.160

APPENDIX D - CAPITAL PROJECTS AND FACILITIES

Revenue source	Eligible cities	Description	Voter approval?	RCW
G.O. Bond Excess Levies (Capital Purposes)	Any city	Multi-year excess property tax levy to repay unlimited tax general obligation bonds. Revenues are restricted to capital purposes. As soon as debt is repaid, excess levies cease.	Yes – 60% supermajority	84.52.056
Impact Fees – Growth Management Act (GMA)	Cities fully planning under GMA	Fee assessed to property developers to help pay for new or expanded capital facilities directly addressing the increased demand created by that development. May only be imposed for streets, parks, schools, and/or fire protection.	No	82.02.050 – .110
Impact Fees – Local Transportation Act (LTA)	Any city	Fee assessed to property developers to help pay for new or expanded transportation facilities directly addressing the increased demand created by that development. However, the only cities we are aware of that have imposed transportation impact fees have done so under GMA, not LTA.	No	Chapter 39.92
Public Facilities District (PFD)	Any city	Any city may form a PFD to construct, operate, or maintain “regional centers” whose construction or operating costs are at least \$10 million. Revenue sources include sales taxes, user fees, admission and parking taxes, and bonds.	Some revenue sources require voter approval	35.57.020
REET 1	Any city	Excise tax of 0.25% on real estate sales. May be used for certain capital projects, depending on city’s population and whether it fully plans under the Growth Management Act (GMA). For cities fully planning under GMA, eligible projects must be listed within the comp plan capital facilities element. May also be used for limited O&M costs, with additional reporting requirements.	No	82.46.010(2)
REET 2	Cities fully planning under Growth Management Act (GMA)	Additional excise tax of 0.25% on real estate sales. May be used for certain capital transportation, water/storm/sewer, and park capital purposes listed in the city’s capital facilities plan (CFP). May also be used for limited REET 1 purposes or capital facility maintenance, with additional reporting requirements. Use of revenues is somewhat more restrictive than REET 1.	No, except for voluntary GMA cities	82.46.035(2)

APPENDIX E - FIRE AND EMERGENCY MEDICAL SERVICES

Revenue source	Eligible cities	Description	Voter approval?	RCW
Emergency Medical Services (EMS) Levy	Any city, as long as it is not located within a county that has imposed the maximum \$0.50 EMS levy or another taxing district that has imposed an EMS levy	Property tax levy up to \$0.50 per \$1,000 AV for emergency medical care or services. May be imposed for 6 years, 10 years, or permanently, with differing voter approval requirements. May also be imposed by counties, fire districts, public hospitals, and other taxing districts.	Yes – simple majority or 60% supermajority	84.52.069
Fire Protection District	Most cities	Any city may form a new fire protection district, or any city with a population of 300,000 or less may annex to an existing district. Revenue source include benefit charges and property taxes up to \$1.50 per \$1,000 AV; may impact city's general fund levy rate.	Yes – simple majority unless funded by taxes/fees requiring 60% approval	chapter 52.04, 52.02.160
Impact Fees – Growth Management Act (GMA)	Cities fully planning under GMA	Fee assessed to property developers to help pay for new or expanded capital facilities directly addressing the increased demand created by that development. May only be imposed for streets, parks, schools, and/or fire protection.	No	82.02.050 – .110
Liquor Excise Tax	Any city	Quarterly distribution from State Treasurer's Office to all cities based on population. At least 20.23% must be used for public safety programs.	No	82.08.160, 82.08.170
Public Safety Sales Tax	Any city, as long as county has not imposed 0.3% public safety sales tax	Sales tax up to 0.1%. At least 1/3 of revenues must be used for criminal justice and/or fire protection purposes; remainder is unrestricted and may be used for any lawful governmental purpose. Counties have similar authority up to 0.3%. Cities and counties share revenue.	Yes – simple majority	82.14.450
REET 1	Any city	Real estate excise tax up to 0.25% – may be used for specified capital purposes/projects, including fire protection facilities. For cities fully planning under GMA, eligible projects must be listed within the comp plan capital facilities element. May also be used for limited O&M costs, subject to additional reporting requirements.	No	82.46.010(2)

Appendix E - Fire and Emergency Medical Services - continued

Revenue source	Eligible cities	Description	Voter approval?	RCW
REET 2	Cities fully planning under GMA	Additional real estate excise tax up to 0.25%. Fire protection facilities are not an outright permitted use for REET 2 funds. However, fire protection facilities are eligible under REET 1, and some REET 2 funds may be used for REET 1 purposes subject to additional reporting requirements.	No, except for voluntary GMA cities	82.46.035(2)
Regional Fire Authority	Any city	Any city may join with another fire protection jurisdiction to form a regional fire authority. Revenue sources include benefit charges and property taxes up to \$1.50 per \$1,000 AV; will impact city's general fund levy rate.	Yes – simple majority unless funded by taxes/fees requiring 60% approval	chapter 52.26

APPENDIX F - MENTAL HEALTH AND SUBSTANCE ABUSE

Revenue source	Eligible cities	Description	Voter approval?	RCW
Liquor Profits and Liquor Excise	Any city	Quarterly distribution from State Treasurer's Office to all cities based on population. At least 2% must be used for approved drug and alcohol treatment programs.	No	82.08.160 , 82.08.170 (Liquor excise) 66.24.065 (Liquor profits)
Marijuana Excise Tax	Cities that do not prohibit marijuana or have at least one marijuana retailer	Quarterly distribution from State Treasurer's Office (1) to cities that do not prohibit marijuana businesses and (2) to cities where marijuana retailers are physically located. No clear guidance on use of revenues, but stated intent of I-502 is that marijuana legalization will "[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention."	No	69.50.540(2)(g)
Mental Health & Chemical Dependency Sales Tax	Cities over 30,000 population within Pierce County only	Sales tax up to 0.1% for mental health and drug treatment purposes. Mostly imposed by and distributed to counties, but certain cities in Pierce County are eligible.	No	82.14.460

APPENDIX G - PARKS AND RECREATION

Revenue source	Eligible cities	Description	Voter approval?	RCW
Impact Fees – Growth Management Act (GMA)	Cities fully planning under GMA	Fee assessed to property developers to help pay for new or expanded capital facilities directly addressing the increased demand created by that development. May only be imposed for streets, parks, schools, and/or fire protection.	No	82.02.050 – .110
Metropolitan Park District (MPD)	Any city	Any city may form an MPD for park and recreation facilities. Revenue sources include additional property taxes up to \$0.75 per \$1,000 AV.	Yes – simple majority	chapter 35.61
REET 1	Any city	Real estate excise tax up to 0.25% – may be used for specified capital purposes/ projects, including parks and recreational facilities. For cities fully planning under GMA, eligible projects must be listed within the comp plan capital facilities element. May also be used for limited maintenance costs, subject to additional reporting requirements.	No	82.46.010(2)
REET 2	Cities fully planning under Growth Management Act (GMA)	Additional real estate excise tax up to 0.25% – may be used for “capital projects” listed within the comp plan capital facilities element, including limited parks capital projects. Use of REET 2 revenues for parks is more restrictive than REET 1. May also be used for limited maintenance costs and REET 1 purposes (including broader definition of parks and recreation), subject to additional reporting requirements.	No, except for voluntary GMA cities	82.46.035(2)

APPENDIX H - POLICE AND CRIMINAL JUSTICE

Revenue source	Eligible cities	Description	Voter approval?	RCW
Criminal Justice Distribution – Contracted Services	Cities that contract for a majority of their law enforcement services	Quarterly distribution from state to be used for criminal justice purposes.	No	82.14.330(2)(a)(i)
Criminal Justice Distributions – High Crime	Cities with high crime rates	Quarterly distribution from state to be used for criminal justice purposes.	No	82.14.320
Criminal Justice Distributions – Population	All cities	Quarterly distribution from state to all cities based on population, to be used for criminal justice purposes.	No	82.14.330(1)(a)(ii)
Criminal Justice Distributions – Special Programs	All cities	Quarterly distribution from state to all cities; revenues must be used for innovative law enforcement, at-risk children and child abuse victims, or domestic violence victims.	No	82.14.330(2)(a)(ii)
Criminal Justice Distributions – Violent Crime	Cities with high violent crime rates	Quarterly distribution from state to be used for criminal justice purposes.	No	82.14.330(1)(a)(i)
Criminal Justice Sales Tax	Any county (not cities)	Sales tax of 0.1% – revenues must be used for criminal justice purposes. May only be imposed by counties, but revenue is shared with all cities within the county on a population basis.	No	82.14.340
Gambling Tax	Any city that allows gambling	Cities that allow gambling may tax the proceeds. Maximum tax rates depend upon type of gambling activity. Revenues must be used “primarily for the purpose of public safety.”	No	9.46.110
Liquor Excise Tax	Any city	Quarterly distribution from State Treasurer’s Office to all cities based on population. At least 20.23% must be used for public safety programs.	No	82.08.160 , 82.08.170

Appendix H - Police and Criminal Justice - continued

Revenue source	Eligible cities	Description	Voter approval?	RCW
Marijuana Excise Tax	Cities that do not prohibit marijuana or have at least one marijuana retailer	<p>Quarterly distribution from State Treasurer's Office (1) to cities that do not prohibit marijuana businesses and (2) to cities where marijuana retailers are physically located.</p> <p>No clear guidance on use of revenues, but stated intent of I-502 is that marijuana legalization will "[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention."</p>	No	69.50.540(2)(g)
Public Safety Sales Tax	Any city, as long as county has not imposed 0.3% public safety sales tax	Sales tax up to 0.1%. At least 1/3 of revenues must be used for criminal justice and/or fire protection purposes; remainder is unrestricted and may be used for any lawful governmental purpose. Counties have similar authority up to 0.3%. Cities and counties share revenue.	Yes – simple majority	82.14.450
REET 1	Any city	Real estate excise tax up to 0.25% – may be used for specified capital purposes/projects, including law enforcement facilities and judicial facilities. For cities fully planning under GMA, eligible projects must be listed within the comp plan capital facilities element. May also be used for limited maintenance costs, subject to additional reporting requirements.	No	82.46.010(2)
REET 2	Cities fully planning under Growth Management Act (GMA)	Additional real estate excise tax up to 0.25%. Law enforcement facilities and judicial facilities are not outright permitted uses for REET 2 funds. However, law enforcement and judicial facilities are eligible under REET 1, and some REET 2 funds may be used for REET 1 purposes subject to additional reporting requirements.	No, except for voluntary GMA cities	82.46.035(2)
Traffic Fines	Any city	State Supreme Court establishes fines for traffic infractions, but revenues are shared with city where infraction occurred. Revenues may be used for any lawful governmental purpose, but a portion must be dedicated to fund local courts.	No	46.63.110(3)

APPENDIX I - TOURISM PROMOTION

Revenue source	Eligible cities	Description	Voter approval?	RCW
Lodging Tax	Any city	Tax up to 4% on the sale of short-term lodging less than 30 days, of which 2% is a credit against the state sales tax. Revenues must generally be spent for tourism promotion. Cities of 5,000 or more population must establish lodging tax advisory committee (LTAC) to guide use of revenues.	No	67.28.180, 67.28.181(1)
Tourism Promotion Area Fees	Any city	Nightly per-room fee on lodging businesses on lodging businesses with 40 or more rooms; must be used for tourism promotion that increases the number of tourists to the area.	No	Chapter 35.101

APPENDIX J - TRANSPORTATION

Revenue source	Eligible cities	Description	Voter approval?	RCW
Border Area Fuel Tax	Any city within 10 miles of a Canadian border crossing, or any TBD encompassing a Canadian border crossing	Local gas tax up to 1 cent per gallon on top of other federal, state, or local gas taxes. Revenues must be used solely for border area jurisdiction street maintenance and construction.	Yes – simple majority	82.47.020
Capron Refunds	Cities in San Juan and Island counties	Refunds of state gas taxes and motor vehicle license fees for cities in San Juan and Island counties to compensate for their lack of state highways and state highway investment. Must be used for same purposes as motor vehicle fuel tax.	No	46.68.080
Commercial Parking Tax	Any city	Tax upon commercial parking businesses. Revenues must be used for transportation purposes.	No	82.80.030
Impact Fees – Growth Management Act (GMA)	Cities fully planning under GMA	Fee assessed to property developers to help pay for new or expanded capital facilities directly addressing the increased demand created by that development. May only be imposed for streets, parks, schools, and/or fire protection.	No	82.02.050 – .110
Impact Fees – Local Transportation Act (LTA)	Any city	Fee assessed to property developers to help pay for transportation improvements directly addressing the increased demand created by that development.	No	Chapter 39.92
Local Household Tax	Cities providing transit service	Excise tax up to \$1 per month per household for public transportation purposes; may not be imposed concurrently with transit sales tax.	No	35.95.040
Local Option Gas Tax	Any county (not cities)	Any county may impose a countywide gas tax of 10% of the state gas tax rate, in addition to existing federal, state, or local gas taxes. Revenues are shared with cities and must be used for transportation/highway purposes.	Yes – simple majority	82.80.010
Motor Vehicle Fuel Tax (MVFT)	All cities	Monthly distribution from state to all cities based on population. Revenues must be used for designated street, road, and highway purposes; must use at least 0.42% for pedestrian, equestrian, or bicycle trails unless such amount would be \$500 or less per year.	No	46.68.090, 46.68.110

Appendix J - Transportation - continued

Revenue source	Eligible cities	Description	Voter approval?	RCW
Multimodal Funds and Increased MVFT	All cities	Quarterly distribution from state to all cities based on population. Increased MVFT must be spent for same purposes as motor vehicle fuel tax; multimodal funds may be spent for any transportation purpose.	No	46.68.126
Parking Meters	Any city	Parking meter fees may be used for administrative costs, parking studies, and acquisition and maintenance of off-street parking facilities.	No	WAC: 308-330-650
REET 1	Any city	Real estate excise tax up to 0.25% – may be used for specified capital purposes/projects, including transportation capital projects. For cities fully planning under GMA, eligible projects must be listed within the comp plan capital facilities element. May also be used for limited maintenance costs, subject to additional reporting requirements.	No	82.46.010(2)
REET 2	Cities fully planning under GMA	Additional real estate excise tax up to 0.25% – may be used for “capital projects” listed within the comp plan capital facilities element, including transportation capital projects. May also be used for limited maintenance costs, subject to additional reporting requirements.	No, except for voluntary GMA cities	82.46.035(2)
Transit Sales Tax	Cities providing transit service	Sales tax up to 0.9% for public transportation purposes. Few cities provide transit service directly, so typically this sales tax authority is used by public transportation benefit areas (PTBAs) or other transit providers.	Yes – simple majority	82.14.045
Transportation Benefit District (TBD)	Any city	Special taxing district to generate revenue for transportation projects included in a local, regional, or state transportation plan. Most common TBD revenue sources are sales taxes and vehicle license fees, but some other options are available. However, I-976 in 2019 repealed TBD vehicle license fees, pending legal challenges.	Some revenue sources require voter approval	82.14.0455, 36.73.040(3)(a), 36.73.065(1)

APPENDIX K - MISCELLANEOUS REVENUES

Revenue source	Eligible cities	Description	Voter approval?	RCW
Annexation Services Sales Tax	Certain cities in King, Pierce, and Snohomish counties	Credit against state sales tax for certain cities that annexed territory prior to January 1, 2015, to help defray the costs of providing municipal services to the area.	No	82.14.415
Fire Insurance Premium Tax	Cities with a pre-LEOFF fire pension fund	Annual distribution from State Treasurer's Office to cities with firefighters' pension funds, based on their proportionate share of firefighters. Revenues must be used for firefighters' pension fund.	No	41.16.050
Investments (Interest Earnings)	Any city	Any city may invest excess monies to generate additional income for one or more funds.	No	35.39.034 , 35A.40.050
Marijuana Excise Tax	Cities that do not prohibit marijuana or have at least one marijuana retailer	Quarterly distribution from State Treasurer's Office (1) to cities that do not prohibit marijuana businesses and (2) to cities where marijuana retailers are physically located. No clear guidance on use of revenues, but stated intent of I-502 is that marijuana legalization will "[allow] law enforcement resources to be focused on violent and property crimes [and generate] new state and local tax revenue for education, health care, research, and substance abuse prevention."	No	69.50.540(2)(g)
Refund Levies	Any city	Property tax levies to pay for property tax administrative refunds or refunds due to judgments.	No	84.69.020 , Chapter 84.68
Surplus Transfers from Utilities and LIDs	Cities with a utility or LID surplus	Cities may be able to transfer surplus funds from a local improvement district (LID) or utility to the general fund, but only under certain circumstances. Cities should generally not have utility surpluses.	No	35.37.020 , 35.27.510
Timber Excise Tax	Cities with timber assessed value	Credit up to 4% against state timber excise tax. Imposed by counties, which share revenue with other taxing districts based on timber sales, timber assessed value, and levy rates. Eligible cities will receive a distribution for all of their levies.	No	84.33.041 , 84.33.051 , 84.33.081

Recommended Resources

Below are additional resources from other organizations that provide further explanation of local government revenues and distributions.

Revenue Sources Generally

Washington Department of Revenue:

- [Statistics & Reports](#) – Comprehensive website tool to create interactive sales and use tax, property tax, and other local government tax reports.

Property Taxes

Washington Department of Revenue:

- [Property Tax Levies Operations Manual](#) – Very comprehensive and detailed manual for administering property taxes.
- [Ballot Measure Requirements](#) – Overview of voted property tax levies, including types of voted levies, the levy lid, election dates, and ballot title requirements.

Sales Taxes and Other Excise Taxes

Washington Department of Revenue:

- [Local Tax Reference Guide](#) – Summaries for all local sales and use taxes, including lodging tax, credits against the state sales tax, and brokered natural gas use tax, as well as E-911 excise taxes and rental car taxes.
- [Tax Reference Manual](#) – General information and history for selected state and local excise taxes; addresses state sales taxes but not local sales taxes.
- [Local Sales and Use Tax Distribution](#) – Annual summaries of sales tax distributions by type and jurisdiction.

State Distributions to Local Governments

Washington State Fiscal Website:

- [Local Government Distributions Guide](#) – Detailed descriptions and history of each distribution of revenues classified as state assistance and state shared revenues.
- [Distributions to Local Entities](#) – Interactive revenue distribution reports for local government entities from 2013 to present by distribution source, by local government entity, or source totals. Distribution amounts reported are based upon the state fiscal period of July 1 to June 30.

Washington State Treasurer's Office:

- [Local Government Revenue Distributions](#) – Brief descriptions, contact information, and distribution data for each local distribution source.

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