Knowing the legal territory

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Outline

• Part one Authority
• Part two Governance
• Part three Meetings and records
• Part four Conflicts and ethics
Part one — Authority

Constitution
Article XI, section 11 of the Washington Constitution provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”

Government sovereignty

- Taxes
- Eminent Domain
- Police power
This is a direct delegation of the police power as ample within its limits as that possessed by the legislature itself. It requires no legislative sanction for its exercise so long as the subject-matter is local, and the regulation reasonable and consistent with the general laws.

_Hass v. City of Kirkland, 78 Wn.2d 929, 481 P.2d 9 (1971)_

“... at least when the interest of the State is paramount to or joint with that of the municipal corporation, the municipal corporation has no power to act absent a delegation from the legislature.”


_And, Employco Personnel Services v. City of Seattle, 117 Wn.2d 606, 616 (1991)_
Article XI, section 11 requires a local law yield to a state statute on the same subject matter if that statute “preempts the field, leaving no room for concurrent jurisdiction,” or “if a conflict exists such that the two cannot be harmonized.”


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**Preemption?**

*See, Chan v. City of Seattle*, 164 Wn. App 349 (2011)
Cannabis?

Charter

The Charter is the local enabling legislation of the people for the local government. Except where preempted by State law, the Charter acts as a further limit or control on municipal authority and procedure. Examples may include term limits, certain residency requirements and procedures for adoption of ordinances.
Ordinance

The Legislative authority “may adopt and enforce ordinances of all kinds relating to and regulating its local and municipal affairs and appropriate to the good government of the city.”

RCW 35A.11.020

“What kind of city is this anyway?”
City classifications

- Code city
- First class city
- Second class city
- Towns
1st class and code city authority

The “home rule” principle seeks to increase government accountability by limiting state-level interference in local affairs. . . .

In this context, it is appropriate for Washington courts to “liberally construe[]” legislative grants of power to cities, particularly first class cities.

*Watson v. City of Seattle (August 10, 2017)*

35.22.570 also grants first class cities all powers Title 35 RCW gives to other cities. . . With respect to municipal business taxes, Seattle has the authority to “collect a license tax for the purposes of revenue and regulation,” a power granted to second class cities. RCW 35.23.440(8).

*Watson v. City of Seattle (August 10, 2017)*

[see RCW 35A.11.020 for code cities]
Part two — Conduct of city government

1889 Washington Statehood
Who does what?

• Council (Legislative authority)
• Executive
  • Mayor
    • Administrator/Supervisor
    • Manager
• City attorney & special counsel

Actions of legislative authority

• Motion
• Resolution
• Ordinance
• Veto
It’s right in city’s charter: Mayor not in charge
January 12, 2023, Peter Callaghan, The News Tribune

Come April, Tacoma will celebrate National Library Week by having a collective reading of “To Kill a Mockingbird” by Harper Lee. It’s a fun idea. I’m all for it.

But I wonder if we couldn’t warm up for the novel by encouraging everyone in town to read something else. It’s called the “Charter of the City of Tacoma” and it’s available on the city’s Web site (www.cityoftacoma.org).

Becoming familiar with the charter might help us all have more realistic expectations of what new Mayor Bill Baarsma can accomplish. Because contrary to popular belief, Bill Baarsma is not the boss of the city.

Tacoma is a council-manager city, not a strong-mayor city like Seattle, or Spokane, or Everett. It’s right there in the charter. The mayor is the official head of the city government only for ceremonial purposes and in the rare event that a mayor of emergency occurs.

But the real head of government is the city manager (although the utilities are under an independent director). Ray Corbus serves at the pleasure of a majority of the council, not at the pleasure of the mayor. It is Corbus who hires department heads, not the mayor. Corbus gives direction to the city staff subject to the policy-making authority of a council majority. Corbus is paid $185,650 a year.

In fact, the mayor and the council are prohibited from interfering with department heads and city employees. Again, it’s right there in the charter.

“Except for the purpose of inquiry, the Council and its members shall deal with administrative officers and employees under the jurisdiction of the Manager solely through the Manager.”

The mayor is a member of the council. He is a legislator, not an executive. He can influence policy only if he can enroll four other council members to vote with him.

Everyone knows this, right? I’m not so sure. I think lots of folks think the mayor is the boss. So they blame the mayor when things go wrong, even though the mayor isn’t to blame and the city manager operates in the shadows. The manager has maximum authority and minimal accountability.

That said, a mayor has some tools that, in skilled hands, can be quite powerful. First, he’s paid $97,008, less than half what Corbus makes but more than double what other council members earn. He has a nice office on the 12th floor down the hall from the city manager’s office. Because he’s around all day, he has the opportunity to be more than just another council member.

In a 1963 interview, then-professor Baarsma said this about the odd role of the mayor: “On the one hand, you have formal authority. On the other hand, you have power. It’s natural for power to gravitate to the person who’s there every day.”

Baarsma is the 13th person to be mayor since voters adopted the new charter 50 years ago. But this city has just gone through a decade of short-term mayors. While seven people served in the job during the charter’s first 40 years, six have done so since Corbus became manager in 1990.

That said, as much as anything, has made for a weak City Council of late, one without the clout to be an effective check and balance on the authority of the city manager.

Baarsma has said he wants to change that. And his plan so far is to do it within the current charter by involving regular citizens in policy-making and by strengthening the council with committees and independent staff.

But it’s also likely that toward the end of his term, Baarsma might begin advocating for a change in government to ask voters to give themselves something many think they already have: a strong mayor.

Following the assumption that the city’s government is business to its logical conclusion, the autocratic mayor is the natural consequence. In the modern business world the captain of industry has come be the chief figure. With the perfection of organization, concentration of power, and fixing responsibility there has developed a one-man rule in big business.

These examples have had an influence on development of municipal structure, organization and methods, and as a result the autocratic mayor has been evolved. It is often conceded that efficiency of the public service is of more importance than the haphazard working of democracy in the old way. The voters are free to choose the mayor in the first instance whose term is limited.

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 in some situations is not clear....

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

Mayor & Councilmember Handbook, Page 33
Potential areas of conflict

- Budgets
- Setting agendas
- Contract administration
- Personnel
- Land use

Council — Staff relations

35A.13.120 City manager — Interference by council members.

Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his removal from, office by the city manager or any of his subordinates.
Council — Staff relations

(...continued) except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately.

(continued…)

Council — Staff relations

(...continued) The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs.
Separate city council staff?

MRSC inquiry no. 98-2101 (April 20, 1998):

“It does not appear possible for the council in a noncharter code city to provide for legislative staff positions that are subject to appointment and removal by the council members rather than the mayor.”

See also MRSC Inquiry No. 06-4229 (August 9, 2006)
Management of legal services

State law authorizes the obtaining of legal services “for the city”. RCW 35A.12.020. Neither the council alone nor the mayor alone constitutes “the city”. Rather, RCW 35A.12.010 vests the government of a noncharter code city, adopting the mayor-council plan of government, in an “elected mayor and an elected council.” In this respect and in others, chapter 35A.12 RCW contemplates that the mayor and the city council will act together on behalf of the city.

1997 AGO No. 7, at 3.

In Washington, there are two scenarios in which the town council of a municipal corporation has the implied authority to hire outside counsel. One, if the council hires outside counsel to represent it, and it prevails on the substantive issue to the benefit of the town, a court may direct the town to pay the reasonable fees and costs of outside counsel.


(continued...)

Two, if extraordinary circumstances exist, such that the mayor and/or town council is incapacitated, or the town attorney refuses to act or is incapable of acting, a court may determine that a contract with outside counsel is both appropriate and necessary.

*State v. Volkmer, 73 Wn. App. 89, 95, 867, P.2d 678 (1994)*

Forfeiture of office
Resignation


Incompatible offices

A person may not hold simultaneous, incompatible public offices. Offices are incompatible when the functions of the office are inconsistent or the public interest would suffer.

See Knowing the Territory
Recall

A recall petition must meet two tests: factual sufficiency and legal sufficiency. Facts in a recall petition, verified under oath must show misfeasance, malfeasance, or violation of the oath of office. Exercise of judgment or discretion cannot be grounds for recall.

*See In re the Matter of Recall Charges against City of Black Diamond and Councilmember Patricia Pepper* (Washington Supreme Court, No. 94574-8 October 26, 2017)

Municipal finance

Local taxation must be authorized by a legislative delegation of taxing power. See WASH. CONST. art. I, § 1.

Municipal corporations have no inherent power to tax.

Municipal finance

Taxes
• Property
• Sales
• Utility
• Business & occupation
• Gambling & other

State and each local government must have a balanced budget
Municipal finance

**Debt authorized**

- General
- Non-voted (councilmanic)
- Voted

Street lights are a governmental function payable from the general fund, not from utility rates.

*Okeson v. Seattle, 150 Wn.2d 540 (2003)*
Governmental or proprietary?

Lane v. City of Seattle, 164 Wn.2d 875 (2008)

Part three — Meetings and records
Meetings

The people insist on remaining informed so that they retain control over the instruments they have created.

RCW 42.30.205 (enacted 2014)

Every member of a governing body (including members of boards and commissions) of a public agency must complete open meetings and public records training within 90 days after taking the oath of office or otherwise assuming official duties. Training must be completed every four years, and may be completed remotely.
Legislative declaration

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

RCW 42.30.010

“Meeting” means meetings at which action is taken

“Action” is broadly defined as “the transaction of the official business of a public agency by a governing body including but not limited to”:

- receipt of public testimony
- deliberations
- discussions
- considerations
- reviews
- evaluations &
- final actions
Meetings

“Meeting” does not require members to be present in the same location or even interact simultaneously.

- Conference call with a majority
- Email exchange that includes substantive input from a majority
- “Serial” meetings such as a phone tree or repeated discussions

BUT, simply receiving information without comment is not a meeting

Parliamentary procedures

Parliamentary procedures are local rules or customs regulating the conduct of legislative proceedings. However, a majority of the quorum will control the meeting procedures.
Informality and efficiency?


You can disagree without being disagreeable.  

Bernard Meltzer/Ronald Reagan
Governing body

“Governing body” means the multimember board or other policy or rule-making body

OR

any committee thereof IF the committee

- acts on behalf of the governing body, or
- takes public comment, or
- conducts hearings, or
- takes testimony

RCW 42.30.020(2)

Developer sues Black Diamond councilmembers

“. . . the developer of a huge planned housing and commercial project, known as Oakpointe Communities, filed a suit . . . alleging more than 135 violations of the state Open Public Meetings Act.

“The lawsuit, which also names the city, asks the court to order the council members, Erika Morgan, Brian Weber and Pat Pepper, to each pay a penalty of $500 for every violation, or more than $67,500 apiece.”

*Seattle Times*, December 4, 2016
Acts on behalf of:

A committee acts on behalf of the governing body:

- NOT simply because the committee “performs a specified function in the interest of the governing body.”
- Only “when it exercises actual or . . . decision-making authority for the governing body.”

_Citizens Alliance v. San Juan County_, 184 Wn.2d 428 (2015)

Meetings are:

Regular

or

Special
Meetings held exclusively by telephone

- **Attorney General Opinion 2017 No. 4:**
  - OPMA does not address phone meetings
  - AGO states agency should be able to comply with OPMA if:
    - One or more specific locations designated as the meeting place
    - Proper notice and agenda posting
    - Provide a speaker phone at designated meeting location
  - But, be careful (clarifying legislation ideal)

Types of meetings

Executive sessions
Executive session

Common grounds:
1. National security or infrastructure/computer security (new in 2017)
2. Acquisition of real estate
3. Sale/lease of real estate* (final decision in open meeting)

[*Must be focused on price, not factors affecting value.

*Columbia Riverkeepers v. Port of Vancouver USA, 188 Wn.2d 421 (June 8, 2017)*]

Executive session, common grounds (cont.)

4. Evaluate charges against a public officer or employee
5. To evaluate the qualifications of an review applicant/ performance
6. To evaluate the qualifications of a candidate for appointment to elective office. *Interviews and selection in public*; and
7. To discuss with legal counsel enforcement action or potential litigation

RCW 70.44.062
Confidentiality of executive session

- Attorney General Opinion 2017 No. 5:
  - Legal obligation to not disclose information discussed in properly convened executive session.
  - Disclosure would violate Code of Ethics of Municipal Officers. Could also constitute:
    - Misdemeanor offense under RCW 42.20.100, or
    - Official misconduct under RCW 9A.80.010.

So, we took action in a closed meeting. Now what?

- Unintentional violation?
  - Nullification of action. RCW 42.30.060.
  - Attorney’s fees and costs. RCW 42.30.120(2).
- Knowing violation? Add personal liability. RCW 42.30.120(1).
  - NEW in 2016: increased fines (formerly $100 per violation)
    - $500 civil fine for first violation
    - $1,000 civil fine for any subsequent violation
- Failed to cure?
  - Potential nullification of later actions.
Invocations?

Public hearings and the hearing process

All meetings of governmental bodies are public meetings, but not all meetings are public hearings. Public hearings are the proceedings in which public comment is invited.
Public comment period

During this portion of the meeting, the Mayor will invite citizens to talk with the Council about topics that are not scheduled for public testimony on the evening’s agenda. Speakers will limit their presentations to 3 minutes, unless a longer period is permitted by Council. No speaker may convey or donate his or her time for speaking to another speaker. If many people wish to speak to a particular issue, Council may limit the total amount of time dedicated to that single issue.

Bothell City Council Protocol Manual (4/17/07), page 46 of 112

Public comment

Back-and-forth exchanges during public comment?

[Link to article](mrsc.org/Home/Stay-Informed/MRSC-Insight/August-2019/No-Back-and-Forth-Exchanges-During-Public-Meetings.aspx)
School Board drops plan to limit public comment

Decision comes after strong outcry from parents

BY SCOTT EMERY

After facing widespread criticism, the Seattle School Board canceled Wednesday evening's vote to adopt a motion to require public comment at some of its meetings.

According to board members, members have been concerned about the lack of opportunities to speak publicly in response to board actions, and have sought ways to improve the process. Board members also discussed the possibility of implementing a new system that would allow for more public input.

Residents and community members have been vocal in their opposition to the proposed changes, and have expressed concern that the changes would limit public participation in the decision-making process.

Mayor’s removal of disruptive citizen from commission meeting does not violate first amendment

"The city that silences a critic will injure itself as much as it injures the critic, for the gadfly’s task is to stir into life the massive beast of the city, to ‘rouse each and every one of you, to persuade and reproach you all day long.’"

Personal liability for public official’s retaliation?

1. Citizen engaged in protected activity
2. Official engaged in conduct that would chill a person of ordinary firmness from further First Amendment activity; and
3. Official acted with motive to chill the citizen speech.

See, Aydelotte v. Town of Skykomish, No. 15-35885 (9th Cir., December 24, 2018)

Public records
Records

RCW 42.56.030, in part, states:

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

(continued…)

Public records

The term “public records” applies to any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map, drawing, ... or other document, regardless of physical form or characteristics ..., that has been made by or received by any agency ... in connection with the transaction of public business.

See RCW 40.14.010 and 42.17.020(41)
Agency record retention

Agencies shall adopt and enforce reasonable rules and regulations, . . . to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.

RCW 42.56.100

Record retention — Examples

- GS50-05A-13 (Rev. 3): Board Minutes: Retain for 6 years after end of calendar year; then transfer to Washington State Archives for permanent retention.
- GS50-01-50 (Rev. 0): Collective Bargaining Agreements; termination plus 6 years.
- GS50-12A-01 (Rev. 1): Catalog/ Records describing the library information sources owned by the agency; retain until no longer needed for agency business then destroy.
Disposition of public records

Public records may be destroyed or transferred only in accord with the instructions and approval of the State of Washington’s Local Records Committee.

RCW 40.14.070

No statement of reasons is necessary

A person making a public records request is not required by the Act to state a reason for the request. The only limitation is that the Act may not be employed to obtain “lists of individuals requested for commercial purposes.”

RCW 42.56.070(9). See also AGO 1988 No. 12; and, SEIU Local 925 v. Freedom Found., 197 Wn. App. 203 (2016) (interpreting commercial purposes exception).
No particular form of request is required

Agencies shall honor requests received by mail for identifiable public records (unless exempted).

Including:

By email (2017)

RCW 42.56.080

(continued…)

No particular form of request is required

(continued…) Although an agency is allowed to make its own reasonable rules for providing records, such rules shall provide for the “fullest assistance to inquirers” and for the “most timely possible action” in response to requests for records.

RCW 42.56.100
Agencies must make documents available

An agency shall make available for inspection and copying all public records, unless covered by a specific exemption.

A requesting party has a right to inspect and copy, but is not required to do both.

Options for responding: 5x5

1. Provide the record, which means making the record available for inspection and copying; or
2. Provide an internet address and link on the agency’s web site to the specific record or records, subject to an exception I’ll come back to; or
3. Acknowledge receipt of the request and provide a reasonable estimate of the time required to respond to the request; or
4. Seek clarification from the requester; or
5. Deny the request.
Highlights of ESHB 1595 (RCW 42.56.080)

- Custom service charge authorized for requests that require preparation of data compilations or customized electronic access not used by the agency for other purposes.
  - Must provide advance cost estimate (subject to judicial review).
- Excessive requests cannot request “all or substantially all” of agency’s records (can be all records regarding particular topic).
- Can deny “bot requests” that cause excessive interference.

Exempt records?

A governmental agency withholding a public record bears the burden of establishing that “refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.”

*Mechling v. City of Monroe, 152 Wn. App. 830 (2009)*
Exempt records

- Redact if possible, rather than withhold entirely.
- Claiming an exemption requires:
  - Brief explanation of how the exemption applies to the record
    (More than just citing the statute)
- No general “right to privacy”
- “Highly offensive to a reasonable person” and
- Not of legitimate concern to the public
- Doesn’t matter if disclosure would cause “inconvenience or embarrassment to public officials or others”

Email
Email

Government employees and public officials who conduct business on private computers cannot reasonably expect those records to be classified as private; business conducted in . . . official capacities is not the personal property of that employee and is not subject to protections afforded to private property.

*Paulson v. City of Bainbridge Island, Kitsap County Cause No. 13-2-01839-1 (Memorandum Opinion, November 1, 2013).*

Text messaging

*See Municipal Research News, “Use of Electronic Services During Council/Commission Meetings” (MRSC, Fall 2017)*
Records, not information

An important distinction must be drawn between a request for information about public records and a request for the records themselves. The act does not require agencies to research or explain public records, but only to make those records accessible to the public. Nor does the act require public agencies to be mind readers.

(continued…)

A public agency cannot be expected to disclose records that have not yet been requested. To hold otherwise would place public agencies in an untenable position.

Enforcement and penalties

- Court can impose statutory penalties to be awarded to requester.
- Court will order payment of requester’s attorneys fees & costs.
- Court can also order disclosure of all or part of withheld record, or non-disclosure of part or all of record.

RCW 42.56.550., 565

Part four — Conflicts and ethics
Quasi-judicial hearings

Bases for disqualification

- Bias
- Prejudice
- Prejudgment
- Violation of Appearance of Fairness Doctrine
It is apparent that the Council gave little consideration to the merits of Maranatha’s application, and that it disregarded the facts set forth in the examiner’s findings. The Council seems to have heard clearly the citizen complaints and the comments of one of its own members while disregarding the record. We cannot escape the conclusion, in view of the evidence in support ...

(...continued)

... Of Maranatha’s application, that the Council based its decision on community displeasure and not on reasons backed by the policies and standards as the law requires. Further, if the Council is concerned with Maranatha’s ability to comply with the 31 conditions that the examiner placed on the permit, the proper remedy is to monitor...

(...continued)
... the operation (for which the conditions provide) and to withdraw the permit in the event of noncompliance. It is improper to deny the permit to an applicant who, throughout the application process, has demonstrated a willingness to mitigate any and every legitimate problem.


... The motion passed by the Spokane City Council was not legislation generally applicable to the entire community but rather an act directed specifically at Mission. It was administrative or executive in nature, not legislative, and therefore **legislative immunity is not available here**.

Therefore we have rather a straightforward situation where clear legal rights of the citizen were violated by city council members acting in excess of their lawful authority and by a city manager acting in excess of his own lawful authority but at the urging of the city council.

Mission Springs v. City of Spokane, 134 Wn.2d at 961.
SeaTac News (July 14, 2016)

City of SeaTac slapped with $18.3 million judgment in land use case; Judge calls for formal sanctions

The trial judge also concluded the former SeaTac mayor wanted condos built on the site, believing they would price out Somalis who had moved into “his neighborhood.”

(Seattle Times 7/26/16)

Private use of public funds prohibited

Credit not to be loaned. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, . . . except for the necessary support of the poor and infirm. . .

Washington Constitution, Article VIII, Section 7
A two-pronged analysis is used to determine whether a gift of public funds has occurred. *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996). The court must initially determine if the funds are being expended to carry out a fundamental purpose of the government. If they are, no gift or loan of public funds has been made. *Id.; Brower v. State*, 137 Wn.2d 44, 62 969 P.2d 42 (1998).

(... continued) If the expenditures are not serving a governmental purpose the court must then determine if a gift has occurred by focusing on the consideration received by the public and the donative intent of the governmental entity. *CLEAN*, 130 Wn.2d at 798.

Public facilities and political campaigns

With three very narrow exceptions, public facilities may NOT be used to advocate a political campaign or any other ballot measure. The definition of “public facilities” is very broad, and encompasses anything paid for by or belonging to the public agency, including employees during working hours.

RCW 42.17.130

See MRSC Insights Election Season ... “Dos” and “Don’ts”
(August 25, 2017)

Mid-term pay increases/decreases

The State Constitution, Article XI § 8, prohibits officials who fix their own compensation from changing pay applicable to the office during the term of office.
A person who is elected to an unexpired term on a city council may not constitutionally receive, during the unexpired term, any changes in compensation previously enacted by the council during that term.

AGO 1999 No. 1 (January 13, 1999)

Conflicts of interest

Well established principles of common law and state statute prohibit a councilmember from participation in a matter that will benefit specifically the member. In some circumstances, the interest is such as to prohibit the act or disqualify the councilmember.
No municipal officer shall be beneficially interested, directly or indirectly, in any contract...

or

accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract...

RCW 42.23.030
Conflict of interest?

Question: May a councilmember
1) be married to a city employee or
2) live with a city employee?

Answer

Absent a separate property agreement, **NO; unless**

- the employee is also an officer of the city, or
- earns less than $18,000 in a calendar year and the city has a population of less than 10,000. See RCW 42.23.030(6).

What constitutes a contract?

http://mrsc.org/getdoc/2926706c-d9b9-4169-adab-ac70dbf4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#supervision

Officer?

"Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

RCW 9A.04.110 (13) (Washington Criminal Code)
Officer?

To answer your question it is first appropriate to resolve the threshold issue of whether the positions here involved (i.e., city or town council and district firefighter) are both public offices. Plainly, a city or town council position is such an office. State ex rel. Cornell v. Smith, 149 Wash. 173, 270 Pac. 306 (1928). Likewise, a municipal firefighter has also been considered to be a public officer. . .
In spite of well-intentioned attempts to avoid a prohibited conflict of interest, Runyon nonetheless violated the plain language of RCW 42.23. The City’s contract for the sewer extension was entered into after Runyon was elected and began serving his term.

(...continued)

(continued...) Under this contract, Rognlin’s, the contractor, bought $11,917.80 worth of rock from Runyon in 1996. That Runyon did not vote on this contract does not shield him from statutory violation.

Citizens for City of Des Moines v. Gary Petersen

... the trial court ruled all the individual towing “contracts” between the city of Des Moines and Pete’s Towing since Petersen took office to be void, ordered Petersen not to permit Pete’s Towing to accept any additional “contracts” with the city of Des Moines while Petersen remained in office, and scheduled a jury trial to determine penalties to be imposed upon Petersen individually.
Towing services or contract?

Arguably, under the council-manager form of government, the city manager would select the towing company or companies with which to contract, and would adopt the administrative regulations—these would seem to be executive functions. . . depending upon the nature of the proposed ordinance, and to the extent that it might include “making” a contract with Pete’s Towing, Councilman Petersen could find himself facing a conflict of interest.

Towing services or contract?

The city of Des Moines has not made any such contract, express or implied, with Pete’s Towing. Not only has Councilman Petersen engaged in no self-dealing, but even if inclined to do so, his ability, and that of the city council as a whole to affect the exercise of discretion by police is limited, both by statute and the Fourth Amendment.
Code of ethics

- Certain exceptions
  
  RCW 42.23.030

- Remote interest exception
  
  RCW 42.23.040

Examples of exceptions - RCW 42.23.030

1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

2) The designation of public depositaries for municipal funds;

3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public; . . .
Remote interests - RCW 42.30.040

1) That of a nonsalaried officer of a nonprofit corporation;
2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
3) That of a landlord or tenant of a contracting party;
4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

Remote interest?

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

RCW 42.30.040
42.23.070. Prohibited acts

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.


Hubbard v. Spokane County

... RCW 42.23.070(1) creates a valid public policy in favor of prohibiting municipal officers from granting special privileges or exemption to others. In so holding, we recognize the burden this may place on public officials. However, because public officials serve the interests of the citizens of Washington, consistent with the Ethics in Public Service Act, we find it appropriate to hold them to a high standard.
Beneficial interest?

RCW ch. 42.23 does not define beneficial interest. ... Although the code does not define a beneficial interest, its list of the types of beneficial interests that are not prohibited by the code is instructive.
Beneficial interest?

Because the exceptions to the general rule prohibiting a municipal officer from having a beneficial interest in certain municipal contracts all involve business transactions or employment matters, we conclude the Legislature intended the term beneficial interest under the general rule to encompass the same thing. We conclude, therefore, that RCW 42.23.030 applies only to municipal contracts involving business transactions, employment matters and other financial interests.

... in a representative democracy, we elect our legislators precisely to carry out agendas and promote causes with full knowledge that “their own personal predilections and preconceptions” will affect their decisions. []As long as these predilections do not lead them to line their pockets or otherwise abuse their offices, we leave the wisdom of their choices to the voters. If the voters do not like their representatives’ agendas or voting decisions, they are free to vote them out of office.


42.23.070. Prohibited acts

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer’s services as such an officer unless otherwise provided for by law.

(...continued)

42.23.070. Prohibited acts

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(...continued)
42.23.070. Prohibited acts

(4) No municipal officer may disclose confidential information gained by reason of the officer’s position, nor may the officer otherwise use such information for his or her personal gain or benefit.

See Attorney General Opinion 2017 No. 5

Further conduct controls

35A.42.050 Public officers and employees—Conduct.

In addition to provisions of general law relating to public officials and others in public administration, employment or public works, the duties and conduct of such officers and other persons shall be governed by [many other statutes].
“The most important political office is that of the private citizen.”

Louis D. Brandeis (1856 — 1941)

**KNOWING THE TERRITORY**

(Revised September 2019)

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