

# Ask MRSC

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## Presenters



**Harry Boesche**

Legal Consultant  
hboesche@mrsc.org



**Eric Lowell**

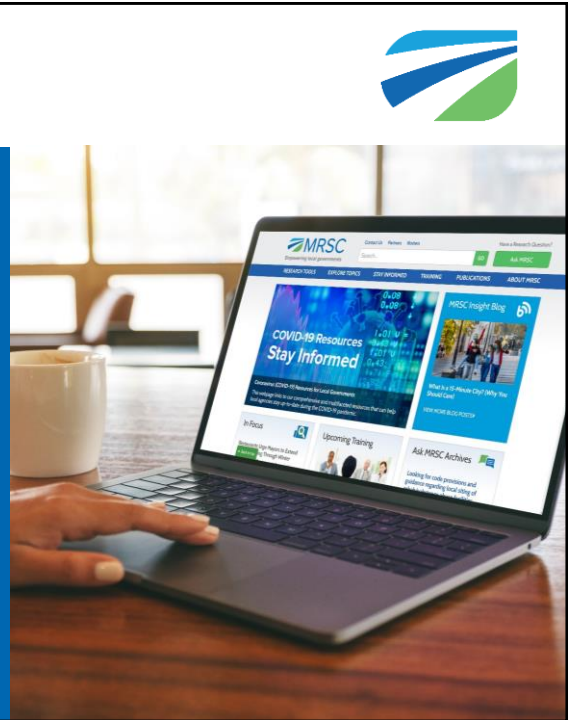
Finance Consultant  
elowell@mrsc.org

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## About MRSC

### Research and Consulting Services for Washington Local Governments and State Agencies

- Free consultation (Ask MRSC)
- Guidance on hundreds of topics
- Webinars and workshops
- E-newsletters
- Sample documents
- Research tools



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## 1<sup>st</sup> Amendment Auditors

Q

A masked individual recently attended a council meeting with a video camera. They started filming the meeting, making councilmembers and the audience uncomfortable.

- 1) Are people allowed to video record council meetings?
- 2) Can we ask the person to leave the meeting?

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# 1<sup>st</sup> Amendment Auditors

A

MRSC says:

- Members of the public are allowed to film open public council meetings
- Filming by itself does not support excluding a person from an open public meeting

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# 1<sup>ST</sup> Amendment Auditors



Three decisions support public's right to film open public meetings:

- Fordyce v. Seattle: legal right to film police officers interacting with the public
- Askins v. Homeland Security: notes 1<sup>st</sup> & 7<sup>th</sup> Circuit holdings that 1<sup>st</sup> Amendment protects public right to film government officials in public spaces
- Zink v. Mesa: RCW 42.30 (OPMA) prohibits governing bodies from restricting public audio/video meeting recording as condition to meeting attendance

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## 1<sup>ST</sup> Amendment Auditors



**Filming is not allowed during executive or closed sessions of a council meeting:**

- to discuss potential agency litigation,
- real estate transactions,
- employee/officer charges or qualifications,
- CBA negotiations, etc.

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## 1<sup>ST</sup> Amendment Auditors



**Filming is not allowed if it “interrupts” orderly conduct of meeting business to make orderly meeting conduct infeasible**

- **Washington AG Opinion** – agencies can regulate filming of meetings, but only as needed to preserve meeting order
- Interruptions require more than just filming: must be combined with other actions that disrupt orderly meeting conduct: shouts to interrupt speakers, blocking council’s view of presented materials, speaking over time during public comment

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## 1<sup>ST</sup> Amendment Auditors



### Procedure to address conduct that interrupts a meeting:

- 1) Tell the person their actions are interrupting the meeting
- 2) Cite the interrupting conduct
- 3) Request them to stop the interrupting conduct
- 4) Warn that continuation may result in exclusion from the meeting
- 5) Can direct removal of filming individual if interrupting conduct persists

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## 1<sup>ST</sup> Amendment Auditors



### Filming is not allowed in locations that are not publicly accessible:

- Private offices
- Secure areas housing agency equipment or supplies
- Parts of council chambers where public isn't allowed (such as on or behind dais)
- Inside public facilities during "closed" hours

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## 1<sup>st</sup> Amendment Auditors

Q

Can a person be required to give their name in order to film an open public meeting?

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## 1<sup>st</sup> Amendment Auditors

A

MRSC says:

The answer depends on whether the person is only attending the meeting, or is also *speaking* at the meeting

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## 1<sup>ST</sup> Amendment Auditors



### Attending the meeting only:

- If the person filming is only attending the meeting, [RCW 42.30.040](#) prohibits conditions on public meeting attendance – cannot require name to remain at meeting

### Also speaking at the meeting:

- MRSC guidance is that agencies can request (but should not require) speakers to give their names and addresses for public comments

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## Lodging Tax



**RCW 67.28.1816** states that Lodging Tax revenues can be used for the following purposes:

- 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 public facilities district
- Operations of tourism-related facilities owned or operated by a nonprofit

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## Lodging Tax



**LTAC – required for cities and counties with a population of 5,000 or more**

### **Minimum requirements:**

- 2 lodging tax collectors
- 2 eligible funding recipients
- 1 elected official
- Representatives from lodging tax collectors and lodging tax recipients must always be equal

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## Lodging Tax



### **RCW 67.28.1816(2)(b)(ii):**

The local lodging tax advisory committee must:

- Select the candidates from amongst the applicants.
- Provide a list of such candidates and recommended amounts of funding to the municipality.
- The municipality may choose **only recipients from the list** of candidates and recommended amounts provided by the local lodging tax advisory committee.

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## Lodging Tax



**Applications should include how funds will increase the number of people traveling:**

- Away from their place of residence or business and staying overnight in paid accommodations.
- To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or
- From another country or state outside of their place of residence or their business

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## Lodging Tax



**Can Lodging Tax Funds be used for a patrol duty officer's salary when assigned to parades or community events when it is an event approved and provided by LTAC funds?**

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## Lodging Tax

**A**

**Yes...as long as the city has applied to the LTAC for such funding.**

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## Lodging Tax

**Q**

**It looks like we have more tax money than we thought and are considering doing a second round of applications and awards. While these award(s) would occur in the current fiscal year, the actual expenditure by the awardee and the actual tourist event(s) might not occur until next fiscal year. Is this allowed?**

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## Lodging Tax

**A**

**Yes. The statute is silent on funding cycles.**

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## Lodging Tax

**Q**

**After receiving funding recommendations from our lodging tax advisory committee (LTAC), the council wants the committee to fund one of the applicants that was not recommended for a grant. If the lodging tax committee does not agree ... can council override the committee's recommendations and choose to fund the applicant anyway?**

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# Lodging Tax

A

No.

## RCW 67.28.1816(2)(b)(ii):

The local lodging tax advisory committee must:

- Select the candidates from amongst the applicants.
- Provide a list of such candidates and recommended amounts of funding to the municipality.
- The municipality may choose **only recipients from the list** of candidates and recommended amounts provided by the local lodging tax advisory committee.

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# Lodging Tax

A

## RCW 67.28.1817(2):

**“Any municipality that proposes...a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment.”**

- 45 days before final action
- LTAC submits comments to county in timely manner

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## Lodging Tax

**Q**

**Can a city use lodging tax funds to pay for floral hanging baskets along main street during the summer hanging from city owned light poles?**

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## Lodging Tax

**A**

**No. Not tourism marketing, marketing and operations of special events and festivals, or operations and capital expenditure of tourism-related facility.**

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## Lodging Tax

Q

Our neighboring city owns a performing arts center that is undergoing some capital improvements. They are asking if they can apply for our hotel/motel taxes to help cover those costs. Can they?

27

## Lodging Tax

A

Yes, they can apply. Can they qualify? It depends. Do activities at the facility bring tourists to the city that would be awarding its lodging tax revenues?

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## Public Records

Q

Our agency received a public records request. We've learned that responsive records may be located on the personal cell phone of a city employee.

Does the employee have to give the City their personal phone for a records search?

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## Public Records

A

**MRSC says:**

Likely not. Agencies must diligently search for records, and "follow leads" in searching.

Personal devices and accounts of agency personnel must be searched **IF** those locations are likely to contain responsive records, **BUT...**

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## Public Records



### Nissen v. Pierce County

Agencies themselves do not have to conduct the required device/account search. Instead, agencies can satisfy the public records search requirement by:

- 1) having personnel search their own devices/accounts for records; and then
- 2) giving the agency an affidavit/declaration regarding their search

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## Public Records



### Cantu v. Yakima School District

Court's focus is on adequacy of agency's search:

- A search that uses "wildcard" search terms may be ruled inadequate if the terms unnecessarily narrow the search
- The adequacy of an agency's records search can depend on the records that have been requested—clarify requests with requesters as needed

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## Public Records



### Recent case: Hood v. Prescott (2024)

PRA search affidavit by City Attorney ruled insufficient:

- The attorney's affidavit described a records search that the City Clerk performed (no personal knowledge)
- The affidavit described the Clerk's search of "electronic records and e-mails," but gave no further description of search type or specific search locations or search terms

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## Public Records



### Records search affidavits must:

- Be reasonably detailed to describe records sought, places searched, and any search terms used to locate records
- Be submitted in good faith
- Be based on 1st hand personal knowledge of the search (Hood case)
- Be submitted to the agency within PRA response deadlines (may depend on underlying records request)

**Prepare with guidance from agency counsel**

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# REET



## Chapter 82.46 RCW

- REET 1 – 0.25%
  - Account for in capital projects fund for REET 1
  - Restricted to capital projects listed in capital facilities plan
- REET 2 – 0.25% (must be fully planning under GMA)
  - Account for in special revenue fund for REET 2
  - Restricted to certain transportation, water/storm/sewer, and park capital purposes

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# REET



## **REET 1 RCW 82.46.010(2)**

### **Uses include:**

- 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
- Maintenance of existing REET 1 capital projects – limited to greater of \$100k or 25% of REET revenue, not to exceed \$1 million

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# REET



## REET 2 **RCW 82.46.035(2)** – (separate fund required)

### Uses include:

- 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; planning, construction, reconstruction, repair, rehabilitation, or improvement of parks
- Maintenance of certain capital projects, REET 1 capital projects – limited to greater of \$100k or 25% of REET revenue, not to exceed \$1 million

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# REET



**Can we use REET to pay for a feasibility study?**

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## REET

**A**

**No. Must be used for capital projects included in a CFP or CIP.**

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## REET

**Q**

**Can the REET fund be used to purchase a town truck or equipment for street maintenance?**

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## REET

**A**

**No. While accountants might consider a truck or a piece of equipment a capital purchase, they are not infrastructure.**

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## Social Media Liability

**Q**

**If a city official discusses agency business on personal social media, can the official:**

- Delete objectionable comments or posts from the discussion?
- Block persons from posting comments in the discussion altogether?

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# Social Media Liability

A

**MRSC says:**

**Maybe. Agency officials have no liability when communicating in their personal capacity on social media, BUT...**

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## Social Media Liability



Officials can be liable under §1983 / 1st Amendment if they delete comments/block posters from their personal social media while communicating in their official capacity

Official communications can change the official's personal social media to 1st Amendment protected "public forum," and comment deletion/blocking limits or prevents public access

The official can be individually and personally liable in addition to the agency

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## Social Media Liability



When does an agency official communicate in their “official capacity” on personal social media?

Prior law (Garnier v. O’Connor-Ratcliff): statements are official if they could create a reasonable public perception that the agency gave the official speaking authority on personal social media

New law (Lindke v. Freed): statements are official only if agency gave the official actual speaking authority on the personal social media topic discussed

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## Social Media Liability



Whether an agency has given an official actual speaking authority on personal social media depends on whether the agency has:

- **Enacted** policies that regulate official speaking authority on personal social media
- **Enforced** its enacted social media speaking policies consistently
- **Historically given** its officials the authority to communicate officially on personal social media (authority given either to a specific *person* or to an *agency position*)

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## Public Comment

Q

Tonight's council meeting includes a public hearing on a topic with a lot of public interest. Our meeting also includes a routine, general public comment period.

Can we remove or limit the public comment period to avoid persons speaking twice on the same topic (once during the public hearing, and again during the meeting's public comment period)?

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## Public Comment

A

MRSC says:

- Cannot entirely remove public comment period from meetings that include "final action"
- Can limit public comments, even if meeting includes final action

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## Public Comment



Risks of removing public comment period entirely:

- [RCW 42.30.240](#)(1): meetings with “final action” must include chance for public comment
  - **Final action:** council collective positive/negative decision or actual vote on motion, proposal, resolution, order, or ordinance
- No guidance on significance of decision or vote
- Safest practice is to treat ANY council decision or vote as final action

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## Public Comment



[RCW 42.30.240](#) – can limit public comments to ensure orderly meeting conduct:

- Request speaker names/addresses (MRSC guidance: do not forbid comment if a speaker declines)
- Limit speaking time and topic (agenda items only)
- Comment period must be “at or before” meeting only—not for each agenda item
- Allow comments in writing only, with reasonable written comment submission deadline
- Make all limits “viewpoint neutral”
- Practices—include limits in agenda/state them at start of comment period

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## Gift of Public Funds

**Q**

**Can we have quarterly staff appreciation lunches or give out small service awards?**

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## Gift of Public Funds

**A**

**Yes, but the city should have a policy in place which ties the lunches/service awards to compensation.**

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## Council Vacancies

Q

Council meeting actions require a quorum of councilmembers.

How does a vacant council seat affect a quorum? Do you count the number of *council seats*, or the number of persons occupying seats to determine if a quorum exists?

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## Council Vacancies

A

MRSC says:

No. Legal authority directly answers this question.

MRSC relies upon McQuillan's treatise on municipal government:

When council vacancies occur, the *whole number of seats entitled to membership* is to be counted for quorum purposes, not just the *number of members remaining* after the vacancy

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## Council Vacancies



Reasoning behind guidance is counting only the councilmembers remaining after a vacancy would:

- Reduce the council's size to below legal membership numbers
- Potentially remove an agency's incentive to promptly fill vacancies

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## Council Appointments

Q

**Speaking of vacancies...**

**Our code city has a council vacancy, and city residence is a qualification to fill it. An applicant to fill the vacancy listed their residence as a commercial building in the City with no approved occupancy.**

**Is this location a sufficient "residence" to qualify for a council appointment?**

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# Council Appointments

A

MRSC says:

Ultimately a council decision, but accepting the location as a qualifying city residence comes with risk

- [RCW 35A.12.030](#) requires city “residence” as a qualification to serve on the council
- [RCW 29A.04.151](#) / Schoessler case define “residence” as “a permanent address where they physically reside and maintain their abode”
- Risk of approving the applicant’s given address is the City formally acknowledging unlawful occupancy

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# City Office Hours

Q

Who decides the business hours of operation for city offices? The Mayor (as a personnel/administrative function), or the council (as a legislative function)?

58

## City Office Hours

A

MRSC says:

Ultimately, the council.

**RCW 35.21.175 (RCW 35A.21.070 for code cities):**

All city and town offices shall be kept open for the transaction of business during such days and hours as the municipal legislative authority shall by ordinance prescribe.

Through legislation, City council can set office hours directly, or delegate role of setting office hours to administration

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## Special Meetings

Q

Our council routinely meets at 6pm but intends to start its next meeting an hour earlier than usual.

- Is a recurring meeting that starts early considered a “special” meeting?
- Does notice for such a meeting need to state that the meeting is a “special meeting?”

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# Special Meetings

A

MRSC says:

Recurring agency meetings that start earlier than usual should be treated as special meetings, and [RCW 42.30.080](#) notice requirements should be followed:

24 hours before meeting:

- Notice to local newspaper
- Notice to radio/TV stations that request in writing to be notified
- Post on agency website
- Display prominently at meeting location

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## Special Meetings



OPMA does not legally require meeting notice to state “special meeting,” BUT...

MRSC’s guidance is that including such statement is a good agency practice to adequately advise the public of the meeting time change

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# Budget

Q

What happens if we don't pass a budget?

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# Budget

A

**RCW [35.33.125](#)/RCW [35A.33.125](#) state that expenditures cannot be made, or liabilities incurred in excess of budget appropriations. Any officials making or incurring expenditures in excess of budget shall be personally liable.**

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# Budget Hearings

Q

How many budget hearings must cities have?

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# Budget Hearings

A

We believe the minimum number of hearings is three.

- [RCW 35.33.057](#), [RCW 35.34.090](#), [RCW 35A.33.055](#), and [RCW 35A.34.090\(2\)](#) all provide that 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.

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## Budget Hearings

Q

Do budget amendments require a hearing?

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## Budget Hearings

A

For regular budget amendments, a public hearing is not required; however, cities may adopt policies that require a public hearing for all budget amendments. I recommend reviewing your city's policies. If there was "a public emergency which could not reasonably have been foreseen" a hearing would be required under [RCW 35A.33.090](#).

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# Final Questions?



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# Thank You!

## Ask MRSC

Have a question we did not answer today?

Submit your questions online at [mrsc.org](http://mrsc.org)

Call us at 800-933-6772 (toll free) or 206-625-1300



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